ORDER OF THE PRESIDENT OF THE COURT

11 July 1996 *

In Case C-148/96 P(R),

Anthony Goldstein, a medical practitioner residing in London, represented by Raymond St John Murphy, Solicitor,

appellant,

APPEAL against the order of the President of the Court of First Instance of the European Communities of 27 February 1996 in Case T-235/95 R *Goldstein* v *Commission* (not published in the European Court Reports), seeking to have that order set aside and interim measures granted,

the other party to the proceedings being:

Commission of the European Communities, represented by Richard Lyal, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: English.

THE PRESIDENT OF THE COURT

after hearing the Advocate General, G. Tesauro,

makes the following

Order

1 By application lodged at the Court Registry on 3 May 1996, the appellant brought an appeal under Article 168a of the EC Treaty and the second paragraph of Article 50 of the EC Statute of the Court of Justice against the order of the President of the Court of First Instance of 27 February 1996 in Case T-235/95 R *Goldstein* v *Commission* (not published in the European Court Reports), in which he dismissed the application for an order that the Commission take all steps necessary to prevent the competent bodies in the United Kingdom from applying certain specific provisions of the European Specialist Medical Qualifications Order 1995 — the new United Kingdom order implementing 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) — until the Court of First Instance had ruled on the main application seeking the annulment of the Commission's decision of 16 October 1995, refusing to adopt certain interim measures to protect the applicant.

2 The factual background to the dispute is set out as follows in the order under appeal:

'1 Dr Goldstein is a medical practitioner of British nationality residing in the United Kingdom. In January 1990, on completion of a course of specialist training in rheumatology, he obtained a Certificate of Specialist Training from

the General Medical Council ("GMC") pursuant to the Medical Qualifications (EEC Recognition) Order 1977 (SI 1977 No 827) as amended by the Medical, Nursing, Dental and Veterinary Qualifications (EEC Recognition) Order 1982 (SI 1982 No 1076), which was at that time the order implementing 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 (OJ 1975 L 167, p. 1) and 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). Those directives have subsequently been codified 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).

2 The GMC is a statutory professional body, currently governed by the Medical Act 1983. The majority of its members are elected by medical practitioners. It has regulatory and disciplinary authority over the medical profession in the United Kingdom. It is responsible for annual publication of the Medical Register, the official list of medical practitioners. Dr Goldstein was entered in that register in 1978 (paragraph 14 of the annex to the Commission's letter of 9 February 1995, Annex 11 to the main application).

3 It is common ground that the Certificate of Specialist Training was issued by the GMC to persons having completed the minimum periods of specialist training required under Articles 4 and 5 of Directive 93/16/EEC, whom the applicant accordingly describes as "Community Medical Specialists". The Medical Qualifications (EEC Recognition) Order 1977, as amended, provided for the inclusion of "persons holding recognized specialist qualifications" on a Specialist List which the GMC might, if it thought fit, publish. According to the applicant, the GMC decided not to publish it. Dr Goldstein is included on that Specialist List.

4 Under Article 5(2) of Directive 93/16/EEC, which re-enacts the wording of Article 5(2) of Directive 75/362/EEC, the specialist medical qualification

issued in the United Kingdom which must be recognized by the other Member States is the "Certificate of Completion of Specialist Training issued by the competent authority recognized for this purpose" ("CCST").

5 According to the Commission, within the United Kingdom the completion of specialist training was not marked by the issue of a certificate until 1 January 1991. Instead, specialists obtained the accreditation of the competent training body, on the basis of which they were eligible for appointment as consultants (the highest rank of hospital doctors) in the National Health Service ("NHS"). Since 1 January 1991, certification of completion of specialist training (corresponding to accreditation) has been indicated by putting the letter "T" next to the specialist's name in the Medical Register.

6 Since the only formal requirement for practising medicine, whether general or specialist, under the rules then in force was full registration, any person on the Specialist List was entitled to practise his or her specialty in the United Kingdom if he or she was included in the Medical Register, according to the Commission (see its letter of 20 January 1994 and the annex to its letter of 9 February 1995 — Annex 8, paragraph 14, and Annex 11, paragraph 27, to the main application). However, the parties agree that accreditation or appointment to a consultant post in the NHS was in practice a precondition for successful private specialist practice.

7 Since possession of a Certificate of Specialist Training was not sufficient to obtain accreditation or appointment as a consultant in the United Kingdom, the Commission considered that the grant of such certificates, which were, in its view, intended solely to allow the holder to practise a specialty in another Member State, was contrary to the provisions of Directive 93/16/EEC relating

to mutual recognition of diplomas, certificates and other evidence of formal qualifications. It considered that the rules on training in Articles 4 and 5 of that directive merely defined the minimum requirements for the award of a specialist diploma by a Member State. Member States were free to provide for longer training periods, in which case, in the Commission's view, they could only award the specialist diploma once the relevant period was completed. The Commission accordingly commenced infringement proceedings against the United Kingdom for failure to comply with Directive 93/16/EEC in that regard. The United Kingdom authorities thereupon adopted a new order implementing the directive, the European Specialist Medical Qualifications Order 1995 (SI 1995 No 3208), amending the rules applicable to specialist medical practitioners in the United Kingdom, most of whose provisions came into force on 12 January 1996.

8 Under the new rules, the GMC remains responsible for registration and recognition of qualifications while a new body, the Specialist Training Authority of the medical Royal Colleges ("the STA") is responsible for specialist medical training in the United Kingdom. The STA is to issue a CCST to persons who complete approved specialist training. The GMC is to keep and publish a Specialist Register containing the names of persons holding a CCST and those holding specialist qualifications awarded elsewhere in the European Economic Area and recognized under Directive 93/16/EEC. Practitioners already possessing a specialist qualification when the new rules entered into force are entitled to have their names included in the Specialist Register if they satisfy the Registrar of the GMC that (a) they are, or have been, consultants in a medical specialty other than general practice, or (b) they have been accredited in such a specialty, or (c) they have satisfied the STA that (i) they have been trained in the United Kingdom in such a specialty and their training complied with the requirements relating to training in that specialty current in the United Kingdom at the time when they undertook it, or (ii) they have qualifications awarded in the United Kingdom in such a specialty that are equivalent to a CCST in that specialty. The Medical Qualifications (EEC Recognition) Order 1977, as amended, which provided for the keeping of the Specialist List, is revoked.

9 It is common ground that Dr Goldstein has not been accredited, has never been appointed as a consultant and does not hold a CCST awarded by the competent training body.

10 According to the Commission, however, persons such as the applicant who hold Certificates of Specialist Training may have the opportunity, where they have sufficient additional training or experience, to obtain registration as specialists under the new system.

11 Against that background, the course of the administrative procedure was as follows. On 10 August 1993 Dr Goldstein, who has encountered difficulty in practising as a rheumatologist in the United Kingdom, sent a complaint to the Commission under Article 3(2) of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87) against what he alleged to be anti-competitive practices on the part of the GMC and the other competent authorities in the field of specialist medical training and qualification. In Dr Goldstein's view, the GMC is an undertaking or association of undertakings composed of medical practitioners. It holds a dominant position inasmuch as it has a statutory monopoly of the licensing and registration of "Community Medical Practitioners" and controls their activity in the United Kingdom. The parties agree that Dr Goldstein's complaint was, essentially, that the GMC, the medical Royal Colleges and the other competent training authorities used their power to impose an artificial limit on the number of medical specialists in favour of NHS practitioners and consultants and to the prejudice of "Community Medical Specialists" and "potential consumers", contrary to Articles 85 and 86 of the EC Treaty. In particular, he complained that the GMC refused to indicate in the Medical Register that holders of a Certificate of Specialist Training were specialist practitioners. He further maintained that the rules imposed by the GMC impeding direct access to specialists by the public and prohibiting specialists from making themselves known to the public constituted a restriction of free competition. Finally, he complained that private insurance companies did not reimburse fees of specialists unless they were either consultants or had been accredited by the competent training body.

12 On 18 November 1994, Dr Goldstein requested the Commission to define its position on his complaint. By letter of 9 February 1995 (Annex 11 to the main application), the Commission informed him that it did not intend to take the matter further and invited him to present any comments he wished to make, pursuant to Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47). Dr Goldstein presented his observations by letter of 12 September 1995 (Annex 12 to the main application).

13 It is common ground that on 10 August 1993, at the same time as he submitted his complaint, Dr Goldstein also requested the adoption of interim measures to enable medical practitioners holding the qualifications listed in the directive to practise their specialty in the United Kingdom. It appears from the Commission's letter of 20 January 1994 rejecting that request (Annex 8 to the main application), that Dr Goldstein was requesting in particular that the Commission should require (i) publication in the Medical Register of a special symbol next to the names of persons holding specialist medical qualifications recognized under Article 5(2) of Directive 93/16/EEC, (ii) publication, and distribution to all Member States, of a separate list of persons holding such qualifications, (iii) withdrawal of the Medical Register 1993 and (iv) restriction of the practice of a specialty and the use of a specialist title to persons holding such a qualification. To establish the urgency of the interim measures requested, Dr Goldstein argued that the fact that medical practitioners like himself, who had completed specialist training in accordance with the requirements of the Community directive, were prevented from practising their specialty in the United Kingdom in a context of free competition was intolerable for the public interest. He referred specifically to the need to prevent the risk that new rules undermining free competition might be introduced. He further claimed that the practices complained of were likely to cause him serious and irreparable harm, indicating in particular that the situation was urgent because he would soon have exhausted the remedies available before the national courts and would be called upon to pay the costs of his unsuccessful proceedings against the Secretary of State for Health.

14 That request was rejected by the Commission in its letter of 20 January 1994 on the ground that the urgency required for the adoption of interim

measures had not been established. The Commission considered that the situation complained of was not intolerable to the public interest since, in any event, the 773 practitioners on the Specialist List were able to practise their specialty and inform general practitioners thereof. As for the alleged risk regarding the introduction of new legislation, the Commission objected that the complainant was basing his argument on a mere report to the Secretary of State for Health on the action needed to bring United Kingdom legislation into line with Directive 93/16/EEC. The Secretary of State had not yet announced what legislation the United Kingdom Government would propose as a result of that report. With regard to the risk of serious and irreparable harm to the complainant himself, the Commission was of the opinion that there was no link between the alleged harm and the measures sought.

15 The applicant made a second request for interim measures on 28 April 1994, rejected by the Commission by letter of 20 June 1994 (Annex 9 to the main application).

16 Dr Goldstein made further requests for interim measures and put forward further legal and factual arguments — relating to the allegedly anticompetitive nature of the GMC's practice under the Medical Qualifications (EEC Recognition) Order 1977, as amended, and to the proceedings brought by him before the national courts — in letters dated 26 May, 4 July, 12 August and 28 September 1994 and 21 June and 3 July 1995 (Annexes 1 to 4, 6 and 7 to the main application). One of those requests was that the Commission should reconsider, in the light of the new arguments mentioned above, its refusal to order interim measures as communicated to him in its letter of 20 January 1994. He also requested various interim measures relating principally to the proceedings before the national courts.

17 The Commission rejected all those requests for interim measures by letter of 16 October 1995 (Annex 10 to the main application).'

3 By application lodged at the Registry of the Court of First Instance on 24 December 1995, the appellant applied for annulment of the Commission's decision of 16 October 1995 confirming the rejection of the interim measures sought.

4 By separate document lodged at the Registry of the Court of First Instance on 10 January 1996, the appellant applied for interim measures under Article 186 of the EC Treaty, seeking an order requiring the Commission forthwith to take all steps necessary to protect his legitimate interests pending the outcome of the main proceedings, so as to prevent the judgment in the main action from being of no practical effect, inasmuch as he claimed to be in danger of disappearing from the market. The measures to be taken were intended, therefore, to ensure that the appellant enjoyed 'Community status' as a specialist in rheumatology during that period. To that end, the appellant applied in particular for an order directing the Commission to prohibit the body set up by the new United Kingdom rules introduced in 1995, the Specialist Training Authority of the medical Royal Colleges, from exercising the powers conferred on it by those rules in relation to the medical training of specialists.

5 By the contested order, the President of the Court of First Instance dismissed the application for interim measures.

6 According to the contested order, the application for interim measures, which related to the implementation of the new system of rules applicable to specialist medicine introduced by the United Kingdom in 1995, fell outside the scope of the final decision which the Court of First Instance might reach on the main application for annulment. In any event, that decision could only have annulled the Commission's refusal to adopt certain interim measures to prevent the competent authorities from pursuing the practices introduced in the context of the former United Kingdom rules.

7 Furthermore, inasmuch as the application for interim measures related to measures for which no request had previously been submitted to the Commission, it was held in the contested order that that application also fell outside the jurisdiction of

the Community judicature, whose role is to carry out a legal review of the Commission's action in competition matters and not to act in place of the Commission in the exercise of the powers conferred on it.

8 Consequently, it was held in the order, for the reasons given, that the application for interim measures must be dismissed as inadmissible.

9 For the rest, the order stated that the substantive conditions relating to urgency and the existence of a prima facie case were not fulfilled in the present case. With regard to urgency, it held that the applicant had merely stated that he was in danger of losing his specialist title, without however establishing the inevitability of that risk. Furthermore, the order stated that, even if the applicant were to be deprived of his title during the course of the main proceedings, he had not shown that the resulting damage would be irreparable. As regards the existence of a prima facie case, it was held that the plea relied on by the applicant in support of his allegation of failure on the part of the Commission to provide an adequate statement of reasons, namely that the contested decision did not refer to the judgment of the Court of Justice in Case C-384/93 *Alpine Investments* v *Minister van Financiën* [1995] ECR I-1141, concerned the substantive issue of the legality of the national measures complained of by the applicant and was therefore irrelevant, since the contested decision was founded exclusively on the lack of urgency of the measures requested.

10 In the present appeal, the appellant requests the President of the Court of Justice to set aside the contested order, to direct the Commission to take all necessary steps to protect his legitimate interests and to order the Commission to pay the costs of the proceedings for interim measures.

11 The Commission submitted its written observations by document lodged at the Court Registry on 31 May 1996.

12 Since the parties' written observations contain all the information needed for a ruling on the appeal, there is no need to hear oral argument.

The appellant's arguments

13 The appellant bases his appeal on a single plea, alleging that the grounds of the contested order are defective.

14 The appellant's observations consist, essentially, of an exhaustive recapitulation of all the substantive arguments which he submitted to the Commission during the administrative procedure and subsequently to the President of the Court of First Instance in the proceedings for interim measures.

15 As regards, more particularly, the grounds of the contested order, the appellant contends, first of all, that, contrary to what is stated in that order, the subject-matter of the main action is the same as that of the application for interim relief, namely the adoption of interim measures enabling him to offer a service for profit as a 'Community Medical Specialist' providing medical services in the field of rheumatology to patients in Member States from the United Kingdom, in accordance with the requirements of Directive 93/16. The appellant considers that, although the contested decision of the Commission refers to certain practices of the GMC under the former United Kingdom rules, its scope of application can be interpreted as extending, in substance, to the interim measures for which he applied to the Court of First Instance.

16 Next, the appellant observes that the argument concerning lack of urgency was incorrectly reasoned in the contested order. The appellant considers in that regard

that he has adequately proved the existence of serious and irreparable harm; he points out that he cannot treat patients covered by a sickness insurance scheme, since most private insurance companies do not reimburse fees of specialists unless they are either consultants or possess a 'higher specialist training' certificate; furthermore, under the advertising rules adopted by the GMC, he is not entitled to make himself directly known to the public; lastly, general practitioners normally refer their patients to consultants and, although the GMC does not prohibit specialists from accepting patients who approach them directly, it advises against this. The appellant considers that that damage is irreparable since, in those circumstances, there is no alternative means by which he can practise as a specialist in rheumatology in accordance with the rules laid down by Directive 93/16.

17 As regards the existence of a prima facie case, the appellant states that the relevance of the principles established in the judgment in *Alpine Investments*, cited above, is a priori such as to justify annulment of the contested decision, since the rules governing the advertising by medical specialists of their services in the United Kingdom, which prohibit the soliciting of potential clients by telephone, prevent him from providing a commercially viable service.

The Commission's arguments

18 The Commission states, first of all, that most of the arguments set out in the appeal are irrelevant for the purposes of assessing the validity of the contested order.

19 As regards the admissibility of the application for interim relief, the Commission considers that the President of the Court of First Instance was right to refuse to allow the applicant indirectly to challenge the new United Kingdom rules under

cover of an application for interim measures made in the context of an action for annulment of the Commission's decision of 16 October 1995.

20 The Commission also considers that, by conceding that he could resume his activities as a specialist if he were to succeed on the substance of his application, the appellant has confirmed the finding of the President of the Court of First Instance that the alleged damage was not in any event irreparable.

21 Lastly, the Commission states that the appeal does not challenge the reasoning in the contested order establishing the absence of a prima facie case in the main action.

Findings

22 Under Article 51 of the EC Statute of the Court of Justice, an appeal is to be limited to points of law and must be brought on the grounds of lack of competence of the Court of First Instance, a breach of the procedure before it or an infringement of Community law by the Court of First Instance. Since those provisions also apply to appeals brought in accordance with the second paragraph of Article 50 of the EC Statute of the Court of Justice, this appeal must be limited to points of law alone, and may not call in question the way in which the President of the Court of First Instance assessed the facts when refusing to grant the interim measures (see the order in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 18).

23 It also follows from Article 112(1)(c) of the Rules of Procedure that an appeal must indicate precisely which aspects of the order are being contested and state the legal arguments relied on in support of the application for it to be set aside.

24 According to settled case-law, that requirement is not satisfied by an appeal which confines itself to repeating or reproducing word-for-word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court; in reality, such an appeal amounts to no more than a request for a re-examination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court of Justice by virtue of Article 49 of the EC Statute (see, in particular, the order in Case C-62/94 P *Turner* v *Commission* [1995] ECR I-3177, paragraph 17).

25 Furthermore, as regards the requirement to state the grounds of an order made on an application for interim relief, the court hearing that application cannot be required to reply explicitly to all the points of fact and law raised in the course of the interlocutory proceedings. It is sufficient that the reasons given validly justify that order in the light of the circumstances of the case and enable the Court of Justice to exercise its powers of review (see the order in *Commission* v *Atlantic Container Line and Others*, cited above, paragraph 58).

26 With regard to the present appeal, it should be observed that, in essence, the considerations put forward by the appellant merely repeat the observations which he made to the Commission in the course of the administrative procedure and subsequently submitted to the President of the Court of First Instance. Those considerations, which relate to the functioning of the medical market in the United Kingdom and the application of Articles 85, 86 and 90 of the EC Treaty, and also to the interpretation of Directive 93/16 and its transposition into the law of that State, are of no relevance whatever to the present appeal. They do not concern — and cannot, therefore, call in question — the conclusions reached in the contested order,

namely that the subject-matter of the application for interim relief is not the same as that of the main action, and that neither serious and irreparable damage nor the existence of a prima facie case has been proven.

27 Consequently, it is necessary to examine only the question whether the few arguments specifically advanced in the appeal against the grounds of the contested order disclose a lacuna or defect in the reasoning of that order.

28 As regards the condition relating to urgency, by virtue of which evidence of serious and irreparable damage must be adduced, the order found, first, that the appellant merely stated that he was in danger of losing his specialist title, without taking into account the opportunity afforded to him by the new rules of securing, subject to certain conditions, the inclusion of his name on the 'specialist register', and, second, that he failed to specify the basis for his contention that the temporary loss of his specialist title amounted to irreparable loss.

29 In opposing the contested order, the appellant merely asserts that the loss suffered by him is irreparable, since, in the absence of interim measures, he will be left with no other means of providing specialist medical services in accordance with the provisions of Directive 93/16.

30 It need only be observed in that regard that — even assuming it were established that the new rules prevent the appellant from gainfully carrying on his specialist activities — the contested order conclusively found that he would be able to resume those activities in the event of his succeeding in the main action, and, indeed, that finding is not contested in the appeal. Moreover, the appellant has not advanced any argument challenging the reasoning in the contested order according to which, in the light of his failure to provide any evidence whatever, it cannot be assumed, in the specific circumstances of the present case, that the temporary interruption of the appellant's activities would result in damage which would be difficult to make good even if he were subsequently to succeed in the main action.

31 In those circumstances, the appeal must be dismissed in that regard, since it does not call in question the reasoning in the contested order according to which the appellant has not provided any evidence of the existence of irreparable damage.

32 Inasmuch as it has been found that the contested order correctly and adequately substantiated its reasoning relating to lack of urgency, the appeal must be dismissed, without there being any need to examine the appellant's arguments in respect of the admissibility of the application for interim measures and the existence of a prima facie case.

Costs

33 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the appellant has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. The appeal is dismissed.

2. The appellant shall bear the costs.

Luxembourg, 11 July 1996.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President