JUDGMENT OF THE COURT
30 April 1986 *

In Case 96/85

Commission of the European Communities, represented by Jacques Delmoly, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

French Republic, represented by Régis de Gouttes, acting as Agent, and Bernard Botte, Deputy Agent, with an address for service in Luxembourg at the French Embassy,

defendant,

APPLICATION for a declaration that by requiring doctors and dental practitioners established in another Member State to cancel their enrolment or registration in that other State in order to be able to practise in France the French Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, T. Koopmans, U. Everling, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, O. Due, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

after hearing the Opinion of the Advocate General delivered at the sitting on 4 March 1986,

* Language of the Case: French.

gives the following

JUDGMENT

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

Decision

1 By an application lodged at the Court Registry on 15 April 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by requiring doctors and dental practitioners established in another Member State to cancel their enrolment or registration in that other State in order to be able to practise in France as an employee, as a locum or as a principal in a practice, the French Republic had failed to fulfil its obligations under the EEC Treaty, in particular Articles 48, 52 and 59.

2 Under Article L 412 of the French code de la santé publique [Public Health Code] any doctor who practices in a département must be enrolled on a register kept by the area council of the ordre des médecins [Medical Society]. It also provides that a doctor 'may be enrolled on only one register', that of the département in which his place of work is situated, save as otherwise provided by the code de déontologie [Code of Medical Ethics]. Furthermore, 'a doctor enrolled or registered as a doctor in another country may not be enrolled on any register of the ordre des médecins'. Under Article L 441 of the code de la santé publique, the same rules apply to dental practitioners.

3 Decree No 77-456 of 28 April 1977 on the internal rules of the Councils of the ordre des médecins, the ordre des chirurgiens-dentistes [Dental Society] and the ordre des sages-femmes [Midwives' Society] sets out the documents which must be submitted with an application for enrolment on the register of the Ordre. It requires *inter alia* a certificate delivered by the authority with which the applicant

was previously enrolled or registered stating that his enrolment or registration has been cancelled, or alternatively a formal declaration by the applicant stating that he has never been enrolled or registered.

4 By a letter of 22 December 1983 the Commission informed the French Government that the above-mentioned French provisions were not in conformity with the provisions of the EEC Treaty. In particular, the Commission pointed out in its letter that the French provisions prevented a doctor or a dental practitioner established in a Member State who wished to maintain his establishment there from acting as a locum in France, opening a practice in France or practising as an employed person in France. The provisions in question were therefore contrary to Articles 48, 52 and 59 of the Treaty.

5 In its letter the Commission asked the French Government to submit its observations within two months, but no reply was received. On 7 June 1984 the Commission addressed a reasoned opinion to the French Republic. Since the French Government did not respond to the reasoned opinion, the Commission brought these proceedings.

6 In its defence the French Government submits that the disputed system is justified on grounds of public health, the importance of which is recognized in Articles 48 and 56 of the Treaty. The protection of patients' health requires that the doctor or dentist should be in their vicinity and that medical care should be continuous, particularly in the case of illnesses in which complications may arise. The frequency and continuity of medical treatment could not be ensured if doctors or dentists were not easily accessible to their patients.

7 The French Government goes on to argue that the activities of doctors and of dental practitioners — referred to as 'chirurgiens-dentistes' [dental surgeons] in the French legislation — are the subject of a number of Community directives which provide for a degree of coordination of the conditions of practice and leave open the possibility of further coordination. The result is that differences of treatment between the Member States continue to exist in areas which have not yet been harmonized, such as medical ethics. The French Government emphasizes that the Councils of the professional organizations are strict in ensuring that practitioners who occupy a second position as an employee or maintain a second practice comply with their ethical obligations, in particular as regards the continuity of

treatment. It is not true that doctors established in other Member States are placed at a disadvantage in this respect in comparison with doctors established in France.

8 It was only at the hearing that the French Government raised the further argument that the Commission's application and the reasoned opinion and letter of formal notice were based on the misconception that a doctor established in another Member State must be registered in France in order to provide services there. Under Article 356-1 of the code de la santé publique, a doctor or dental practitioner who is a national of another Member State and is established and legally practising in another Member State may carry out medical or dental activities in France without being enrolled on a register of the appropriate professional organization under conditions laid down by administrative decree. The decree in question (Decree No 77-637, which applied only to doctors and has been replaced by Decree No 86-112 which applies also to dental practitioners) provides that where services are provided in France a declaration containing certain information must be made to the area Council of the appropriate Ordre. Under the decree several medical activities may be included in a single declaration when they concern a single patient and are carried out during a temporary stay in France of not more than two days.

9 At the hearing the Commission stated that the decree in question seemed to be too restrictive to allow of the freedom to provide services envisaged in the Treaty.

10 It must first be pointed out that nationals of a Member State who pursue their occupation in another Member State are obliged to comply with the rules which govern the pursuit of the occupation in question in that Member State. As the French Government rightly observes, in the case of the medical and dental professions those rules reflect in particular a concern to ensure that individuals enjoy the most effective and complete health protection possible.

11 However, in so far as those rules have the effect of restricting freedom of movement for workers, the right of establishment and the freedom to provide services within the Community, they are compatible with the Treaty only if the restrictions which they entail are actually justified in view of the general obli-

gations inherent in the proper practice of the professions in question and apply to nationals and foreigners alike. That is not the case where the restrictions are such as to create discrimination against practitioners established in other Member States or raise obstacles to access to the profession which go beyond what is necessary in order to achieve the intended goals.

12 In that context, it must be stated first of all that the principle that a practitioner may have only one practice, put forward by the French Government as indispensable to the continuity of medical care, is applied more strictly with regard to practitioners from other Member States than practitioners established in France. Although, according to the documents before the Court and the information provided by the parties, the Councils of the ordre des médecins authorize doctors established in France to open a second practice only at a short distance from their main practice, doctors established in another Member State, even close to the frontier, are never permitted to open a second practice in France. Similarly, the French legislation makes it possible in principle for dental surgeons established in France to be authorized to open one or more secondary practices, but a dental practitioner established in another Member State can never be authorized to open a second practice in France.

13 Secondly, it must be observed that the general rule prohibiting doctors and dental practitioners established in another Member State from practising in France is unduly restrictive. First of all, in the case of certain medical specialties, it is not necessary that the specialist should be close to the patient on a continuous basis after the treatment has been given. That is so where the specialist carries out a single procedure, as is often the case of a radiologist, for example, or where subsequent care is provided by other medical personnel, as is often the case of a surgeon. Furthermore, as the French Government indeed recognized, recent developments in the medical profession show that even in the area of general medicine the increasing trend is for practitioners to belong to group practices, so that a patient cannot always consult the same general practitioner.

14 Those considerations show that the prohibition on the enrolment in a register of the Ordre in France of any doctor or dental surgeon who is still enrolled or registered in another Member State is too absolute and general in nature to be justified by the need to ensure continuity of medical treatment or of applying French rules of medical ethics in France.

15 The Commission is therefore correct to argue that the French legislation prohibiting any doctor or dentist established in another Member State from practising in France as a locum, as a principal in a practice or as an employee is contrary to the provisions of the Treaty on freedom of movement for persons.

16 The French Government's argument that the freedom of doctors established in other Member States to provide services is recognized in France on the basis of Article 356-1 of the code de la santé publique is not relevant. In both its reasoned opinion and its application to the Court the Commission merely contended that because of its generality the French system was contrary to the freedom to provide services inasmuch as it never permitted a doctor established in another Member State to act as locum for a doctor established in France. The application of Article 356-1 is subject to the requirements set out in the implementing decree, according to which a doctor established in another Member State can provide medical treatment to only a single patient for a period of not more than two days. Such a limited possibility of carrying out medical treatment does not allow that doctor to act as locum for a French colleague.

17 It must therefore be held that by requiring doctors and dental practitioners established in another Member State to cancel their enrolment or registration in that other Member State in order to be able to practise their profession in France as an employee, as a principal in a practice or as a locum the French Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty.

Costs

18 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by requiring doctors and dental practitioners established in another Member State to cancel their enrolment or registration in that other Member State in order to be able to practise their profession in France as an employee, as a principal in a practice or as a locum the French Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty;

(2) Orders the French Republic to pay the costs.

Mackenzie Stuart Koopmans Everling Bahlmann Joliet

Bosco Due Galmot Kakouris O'Higgins Schockweiler

Delivered in open court in Luxembourg on 30 April 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President