JUDGMENT OF THE COURT

4 July 2000 *

In Case C-424/97,

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

Salomone Haim

and

Kassenzahnärztliche Vereinigung Nordrhein

on the liability of a Member State and, possibly, of a public-law body of that State for loss and damage caused by an infringement of Community law, and on the legality of making the appointment of a national of another Member State as a dental practitioner under a social security scheme conditional upon his having a sufficient knowledge of the language of the host State,

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, D.A.O. Edward (Rapporteur), L. Sevón, R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Haim, by H. Ungewitter, Rechtsanwalt, Düsseldorf,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, A. Dittrich, Ministerialrat in the Federal Ministry of Justice, and C.-D. Quassowski, Regierungsdirektor in the Federal Ministry of Economic Affairs, acting as Agents,

— the Greek Government, by A. Samoni-Rantou, Legal Adviser to the Community Law Section of the Special Legal Department of the Ministry of Foreign Affairs, and S. Vodina and G. Karipsiadis, Legal Assistants in the same department, acting as Agents,

— the Spanish Government, by N. Díaz Abad, Abogado del Estado, acting as Agent,

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

— the Swedish Government, by E. Brattgård, Departementsråd in the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and E. Sharpston, Barrister,

— the Commission of the European Communities, by B. Mongin and P. van Nuffel, of its Legal Service, acting as Agents, assisted by B. Wägenbaur, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Haim, represented by U. Faust, Rechtsanwalt, Aachen; of the Kassenzahnärztliche Vereinigung Nordrhein, represented by B. Bellwinkel, Rechtsanwalt, Düsseldorf; of the German Government, represented by A. Dittrich; of the Danish Government, represented by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent; of the Greek Government, represented by A. Samoni-Rantou and G. Karipsiadis; of the Spanish Government, represented by N. Díaz Abad; of the French Government, represented by A. de Bourgoing, Chargé de Mission in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; of the Italian Government, represented by G. Aiello, Avvocato dello Stato; of the Swedish Government, represented by A. Kruse, Departementsråd in the Ministry of Foreign Affairs, acting as Agent; of the United Kingdom Government,

represented by E. Sharpston; and of the Commission, represented by B. Mongin, assisted by B. Wägenbaur, at the hearing on 9 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 19 May 1999,

gives the following

Judgment

1 By order of 8 December 1997, received at the Court on 15 December 1997, the Landgericht (Regional Court) Düsseldorf referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the conditions and detailed rules under which a Member State and, possibly, a public-law body of that State may incur liability for loss and damage caused to individuals as a result of breaches of Community law for which that State or body can be held responsible, and on the legality of making the appointment of a national of another Member State as a dental practitioner under a social security scheme conditional upon his having a sufficient knowledge of the language of the Member State of establishment.

2 Those questions were raised in proceedings brought by Salomone Haim, a dental practitioner, against the Kassenzahnärztliche Vereinigung Nordrhein (Association of Dental Practitioners of Social Security Schemes in Nordrhein, 'the KVN'), a public-law body, in order to obtain compensation for the loss of earnings which he claims to have suffered as a result of the breach of Community law by the KVN.

Community law

3 Article 2 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1978 L 233, p. 1) provides that each Member State is to recognise the diplomas, certificates and other evidence of formal qualifications in dentistry which are exhaustively listed in Article 3 of that directive and which are awarded by the other Member States, by giving such qualifications, as far as the right to take up and pursue the activities of a dental practitioner is concerned, the same effect in its territory as those which the Member State itself awards.

4 Article 18(3) of Directive 78/686 provides:

'Member States shall see to it that, where appropriate, the persons concerned acquire, in their interest and in that of their patients, the linguistic knowledge necessary for the exercise of their profession in the host Member State.'

5 Article 20 of Directive 78/686 provides:

'Member States which require their own nationals to complete a preparatory training period in order to become eligible for appointment as a dental practitioner of a social security scheme may impose the same requirement on nationals of the other Member States for a period of eight years following

notification of this directive. The training period may not, however, exceed six months.'

National law

6 Paragraph 21 of the Zulassungsordnung für Kassenzahnärzte (Regulation of 28 May 1957 on Eligibility for Appointment as a Dental Practitioner of a Social Security Scheme, BGBl. 1957 I, p. 582), as amended ('the ZOK'), provides:

'A dental practitioner with serious shortcomings relating to his mental state or to his person, in particular one who has been a drug-addict or an alcoholic in the five years preceding the submission of his application, shall not be suitable to practise as an approved practitioner of a social security scheme.'

The dispute in the main proceedings

7 Mr Haim, an Italian national, holds a diploma in dentistry awarded in 1946 by the University of Istanbul, Turkey, the town in which he practised as a dentist until 1980.

8 In 1981, he obtained permission ('Approbation') to practise as a dental practitioner in the Federal Republic of Germany, which enabled him to practise there as a self-employed dentist.

9 In 1982, his Turkish diploma was recognised by the Belgian authorities as equivalent to the 'diplôme légal belge de licencié en science dentaire' (the official diploma of graduate in dental science). Mr Haim subsequently worked in Brussels as a dental practitioner under a social security scheme. He interrupted that activity between November 1991 and August 1992 in order to work in his son's dental practice in Germany.

10 In 1988, Mr Haim applied to the KVN to be enrolled on the register of dental practitioners so that he could then be eligible for appointment as a dental practitioner under a social security scheme.

11 Under Paragraph 3.2 of the ZOK, such enrolment is subject to completion of a preparatory training period of at least two years. However, under Paragraph 3.4 of the ZOK, that condition does not apply to dental practitioners who have obtained in another Member State a qualification recognised under Community law and who are authorised to practise that profession.

12 By decision of 10 August 1988, the KVN refused to enrol Mr Haim on the register of dental practitioners on the ground that he had not completed the two-year preparatory training period required by Paragraph 3 of the ZOK. It took the view that there could be no derogation from that provision because Mr Haim did not hold a qualification awarded by a Member State, but only a diploma from a non-member country, recognised by a Member State as equivalent to the diploma awarded in that Member State.

13 Mr Haim challenged that decision, arguing, *inter alia*, that it infringed the EEC Treaty. After seeking the opinion of the Minister for Employment, Health and Social Affairs of the Land Nordrhein-Westfalen, its supervisory authority, which shared its opinion, the KVN rejected Mr Haim's complaint by decision of 28 September 1988.

14 Mr Haim's action against the KVN's decision was dismissed by judgment of the Sozialgericht (Social Court) Düsseldorf of 28 March 1990 and then, on appeal, by judgment of the Landessozialgericht (Higher Social Court) Nordrhein-Westfalen of 24 October 1990. On appeal on a point of law, the Bundessozialgericht (Federal Social Court), by order of 20 May 1992, made a reference to the Court of Justice for a preliminary ruling on the interpretation of Article 20 of Directive 78/686 and of Article 52 of the EEC Treaty (now, after amendment, Article 43 EC).

15 In Case C-319/92 *Haim* [1994] ECR I-425 ('*Haim I*'), the Court ruled that Article 20 of Directive 78/686 does not prohibit a Member State from requiring a national of another Member State who has none of the qualifications listed in Article 3 of that directive to complete a preparatory training period in order to be eligible for appointment as a dental practitioner under a social security scheme even though he is authorised to practise in the territory of the first State. Nor does that article exempt from the preparatory training period a national of a Member State who holds a qualification awarded by a non-member country, where that qualification has been recognised by another Member State as equivalent to one listed in Article 3 of the Directive. The Court added, however, that it is not permissible under Article 52 of the Treaty for the competent authorities of a Member State to refuse appointment as a dental practitioner under a social security scheme to a national of another Member State who has none of the qualifications mentioned in Article 3 of Directive 78/686, but who has been authorised to practise, and has been practising, his profession both in the first and in another Member State, on the ground that he has not completed the preparatory training period required by the legislation of the first State, without examining whether, and, if so, to what extent, the experience already established by the person concerned corresponds to what is required by that legislation.

16 Following that judgment, Mr Haim was enrolled on the register of dental practitioners by decision of 4 January 1995. On account of his age, he did not take the steps necessary to obtain his appointment as a dental practitioner under a social security scheme.

17 Mr Haim none the less brought a further action against the KVN before the Landgericht Düsseldorf in order to obtain compensation for the loss of earnings

which he claims to have suffered by virtue of the fact that, between 1 September 1988 and the end of 1994, his earnings were lower than those which he could have expected if he had practised as a dental practitioner under a social security scheme in Germany.

18 The Landgericht considers that the KVN was wrong to refuse to enrol Mr Haim on the register of dental practitioners in 1988, since it failed to take account of the professional experience he had acquired when working as an approved dental practitioner in Belgium. However, in taking such a decision, the KVN acted in good faith.

19 First, Paragraph 3 of the ZOK did not provide for the possibility of derogation, on account of professional experience acquired by a dental practitioner abroad, from the obligation to complete a two-year preparatory training period.

20 Second, it was by reference to Article 52 of the Treaty, which guarantees freedom of establishment, that the KVN's decision turned out to be unlawful. The question whether, and to what extent, respect for Mr Haim's freedom of establishment required his professional experience to be taken into account had not been decided at that time. According to the national court, it is only since the judgment in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357 that it has been clear that Mr Haim's professional experience should have been taken into consideration.

21 The national court concludes accordingly that the KVN, in refusing to enrol Mr Haim on the register of dental practitioners in 1988, did not commit a wrong under German law governing the administrative liability of public authorities and that consequently Mr Haim's action in damages has no basis in domestic law.

22 The national court wonders, however, whether Mr Haim could derive a right to reparation against the KVN directly from Community law, since according to the case-law of the Court of Justice a Member State is liable for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible, even in the case of an unlawful administrative act.

23 Furthermore, having regard to the KVN's argument that Mr Haim, even if he had been enrolled on the register of dental practitioners since 1988, would not have obtained his appointment as an approved dental practitioner because of his insufficient knowledge of German, the Landgericht wonders whether the national authorities are entitled to make the appointment of a person such as Mr Haim as a dental practitioner under a social security scheme subject to language requirements.

24 The Landgericht Düsseldorf therefore decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. If an official of a legally independent public-law body of a Member State infringes primary Community law when applying national law in the context of an individual decision, can the public-law body be held liable as well as the Member State?

2. If so: Where a national official has either applied national law conflicting with Community law or applied national law in a manner not in conformity

with Community law, is there a serious breach of Community law simply on the ground that the official had no discretion in making his decision?

3. May the competent authorities of a Member State make appointment, as a social security scheme dental practitioner, of a national of another Member State who is authorised to practise in that Member State but has none of the qualifications mentioned in Article 3 of Directive 78/686, conditional upon that person's having the linguistic knowledge which he needs for the exercise of his professional activity in the host State?'

The first question

25 By its first question, the national court is asking essentially whether Community law precludes a public-law body, in addition to the Member State itself, from incurring liability to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.

26 First of all, it should be recalled that liability for loss and damage caused to individuals as a result of breaches of Community law attributable to a national public authority constitutes a principle, inherent in the system of the Treaty, which gives rise to obligations on the part of the Member States (see Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; Case C-392/93 *British Telecommunications* [1996] ECR I-1631, paragraph 38; Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 24; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* v *Germany* [1996] ECR I-4845, paragraph 20; and Case C-127/95 *Norbrook Laboratories* v *MAFF* [1998] ECR I-1531, paragraph 106).

27 As in substance all the governments which submitted observations to the Court and the Commission have pointed out and as is clear from the case-law of the Court, it is for each Member State to ensure that individuals obtain reparation for loss and damage caused to them by non-compliance with Community law, whichever public authority is responsible for the breach and whichever public authority is in principle, under the law of the Member State concerned, responsible for making reparation (Case C-302/97 *Konle* v *Austria* [1999] ECR I-3099, paragraph 62).

28 Member States cannot, therefore, escape that liability either by pleading the internal distribution of powers and responsibilities as between the bodies which exist within their national legal order or by claiming that the public authority responsible for the breach of Community law did not have the necessary powers, knowledge, means or resources.

29 However, in the judgments cited in paragraphs 26 and 27 above there is nothing to suggest that reparation for loss and damage caused to individuals by national measures taken in breach of Community law must necessarily be provided by the Member State itself in order for its obligations under Community law to be fulfilled.

30 As regards Member States with a federal structure, the Court has held that, if the procedural arrangements in the domestic system enable the rights which individuals derive from the Community legal system to be effectively protected and it is not more difficult to assert those rights than the rights which they derive from the domestic legal system, reparation for loss and damage caused to individuals by national measures taken in breach of Community law need not necessarily be provided by the federal State in order for the Community law obligations of the Member State concerned to be fulfilled (*Konle*, paragraphs 63 and 64).

31 That is also true for those Member States, whether or not they have a federal structure, in which certain legislative or administrative tasks are devolved to territorial bodies with a certain degree of autonomy or to any other public-law body legally distinct from the State. In those Member States, reparation for loss and damage caused to individuals by national measures taken in breach of Community law by a public-law body may therefore be made by that body.

32 Nor does Community law preclude a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.

33 It is well settled that, subject to the existence of a right to obtain reparation which is founded directly on Community law where the conditions for Member State liability for breach of Community law are met, it is on the basis of rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused, with the proviso that the conditions for reparation of loss and damage laid down by national legislation must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it in practice impossible or excessively difficult to obtain reparation (*Francovich and Others*, paragraphs 41 to 43; and *Norbrook Laboratories*, paragraph 111).

34 In view of the foregoing, the answer to the first question must be that Community law does not preclude a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.

The second question

35 By its second question, the national court asks whether, where a national official has either applied national law conflicting with Community law or applied national law in a manner not in conformity with Community law, the mere fact that he did not have any discretion in taking his decision gives rise to a serious breach of Community law, within the meaning of the case-law of the Court.

36 It is clear from the case-law of the Court that three conditions must be satisfied for a Member State to be required to make reparation for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible: the rule of law infringed must have been intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the loss or damage sustained by the injured parties. Those conditions are to be applied according to each type of situation (*Norbrook Laboratories*, paragraph 107).

37 Those three conditions must be satisfied both where the loss or damage for which reparation is sought is the result of a failure to act on the part of the Member State, for example in the event of a failure to implement a Community directive, and where it is the result of the adoption of a legislative or administrative act in breach of Community law, whether it was adopted by the Member State itself or by a public-law body which is legally independent from the State.

38 As regards, more particularly, the second of those conditions, the Court has held that a breach of Community law is sufficiently serious where a Member State, in the exercise of its legislative powers, has manifestly and gravely disregarded the limits on its powers (see *Brasserie du Pêcheur and Factortame*, paragraph 55; *British Telecommunications*, paragraph 42; and *Dillenkofer and Others*, paragraph 25) and that where, at the time when it committed the infringement, the Member State in question had only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to

establish the existence of a sufficiently serious breach (see *Hedley Lomas*, paragraph 28; and *Norbrook Laboratories*, paragraph 109).

39 The obligation to make reparation for loss or damage caused to individuals cannot, however, depend upon a condition based on any concept of fault going beyond that of a sufficiently serious breach of Community law (*Brasserie du Pêcheur and Factortame*, paragraph 79).

40 The discretion referred to in paragraph 38 above is that enjoyed by the Member State concerned. Its existence and its scope are determined by reference to Community law and not by reference to national law. The discretion which may be conferred by national law on the official or the institution responsible for the breach of Community law is therefore irrelevant in this respect.

41 It is also clear from the case-law cited in paragraph 38 that a mere infringement of Community law by a Member State may, but does not necessarily, constitute a sufficiently serious breach.

42 In order to determine whether such an infringement of Community law constitutes a sufficiently serious breach, a national court hearing a claim for reparation must take account of all the factors which characterise the situation put before it.

43 Those factors include, in particular, the clarity and precision of the rule infringed, whether the infringement and the damage caused was intentional or involuntary, whether any error of law was excusable or inexcusable, and the fact that the position taken by a Community institution may have contributed towards the

adoption or maintenance of national measures or practices contrary to Community law (see *Brasserie du Pêcheur and Factortame*, paragraph 56, as regards the conditions under which the State may incur liability for acts and omissions of its national legislature contrary to Community law).

44 As regards the application of those criteria in the present case, it is clear from the case-law of the Court that, in principle, they must be applied by the national courts (*Brasserie du Pêcheur and Factortame*, paragraph 58) in accordance with the guidelines laid down by the Court (*Konle*, paragraph 58).

45 In this respect, it should be noted that the rule of Community law concerned is a Treaty provision which has been directly applicable since the transitional period laid down by the Treaty came to an end, long before the facts in the main proceedings arose.

46 However, when the German legislature adopted Paragraph 3 of the ZOK and the KVN then refused to enrol Mr Haim on the register of dental practitioners, the Court had not yet given judgment in the *Vlassopoulou* case, in paragraph 16 of which it held for the first time that a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialised knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.

47 The Court applied the same principle when it held, in paragraph 29 of *Haim I*, that it is not permissible under Article 52 of the Treaty for the competent authorities of a Member State to refuse appointment as a dental practitioner

under a social security scheme to a national of another Member State who has none of the qualifications mentioned in Article 3 of Directive 78/686, but who has been authorised to practise, and has been practising, his profession both in the first and in another Member State, on the ground that he has not completed the preparatory training period required by the legislation of the first State, without examining whether, and, if so, to what extent, the experience already established by the person concerned corresponds to that required by that provision.

48 In the light of the criteria and observations referred to in paragraphs 43 to 47 above, it is for the national court to examine whether or not, in the case before it, there is a serious breach of Community law.

49 The answer to the second question must therefore be that, in order to determine whether there is a serious breach of Community law, within the meaning of the case-law of the Court, account must be taken of the extent of the discretion enjoyed by the Member State concerned. The existence and the scope of that discretion must be determined by reference to Community law and not by reference to national law.

The third question

50 By its third question, the national court asks whether the competent authorities of a Member State may make the appointment, as a social security scheme dental practitioner, of a national of another Member State who is established in the first Member State and authorised to practise there but has none of the qualifications mentioned in Article 3 of Directive 78/686, conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the Member State of establishment.

51 The national court states that such language requirements might be contrary to Article 18(3) of Directive 78/686 and to Article 52 of the Treaty.

52 As regards Article 18(3) of Directive 78/686, the rules on mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry laid down by Directive 78/686 do not apply to diplomas obtained in a non-member country, even if they have been recognised by a Member State as equivalent to diplomas awarded in that Member State (see Case C-154/93 *Tawil-Albertini* [1994] ECR I-451, paragraph 13).

53 Since Mr Haim's diploma was awarded by a non-member country, and notwithstanding the fact that it has been recognised by another Member State as equivalent to a diploma mentioned in Article 3 of Directive 78/686, it does not fall within the scope of that directive.

54 Consequently, it is not necessary to examine whether or not, in a case such as that at issue in the main proceedings, the requirement of linguistic knowledge for appointment as a dental practitioner under a social security scheme is contrary to Article 18(3) of that directive.

55 Furthermore, relying directly on Article 52 of the Treaty, Mr Haim claims that, contrary to what is said by the national court, Paragraph 21 of the ZOK cannot justify the requirement of linguistic knowledge such as that demanded of him in the case in the main proceedings. That provision provides that a dental practitioner with serious shortcomings relating to his mental state or to his person, in particular one who has been a drug addict or an alcoholic in the five years preceding the submission of his application to be appointed as a dental practitioner under a social security scheme, is not suitable to practise as an

appointed practitioner. According to Mr Haim, it is clear from the situations mentioned as examples in that provision that it does not, and cannot, apply to linguistic shortcomings.

56 In this respect, while it is true that Paragraph 21 of the ZOK does not appear, according to its wording, to relate to the linguistic knowledge of the person concerned, it is not for the Court to rule, in the context of a reference for a preliminary ruling, on the interpretation to be given to a provision of national law and, more specifically, on the question of which types of shortcoming are the subject of a national provision such as Paragraph 21 of the ZOK.

57 According to the Court's case-law, national measures which restrict 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, in particular, Case C-55/94 *Gebhard* v *Consiglio dell'Ordine degli Avvocati e Procuratori di Milano* [1995] ECR I-4165, paragraph 37; and Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 34).

58 Although, as regards the division of jurisdiction between the Community judicature and national courts, it is in principle for the national court to determine whether those conditions are fulfilled in the case pending before it, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification to guide the national court in its interpretation.

59 As the Advocate General notes in points 105 to 113 of his Opinion, the reliability of a dental practitioner's communication with his patient and with administrative authorities and professional bodies constitutes an overriding reason of general

interest such as to justify making the appointment as a dental practitioner under a social security scheme subject to language requirements. Dialogue with patients, compliance with rules of professional conduct and law specific to dentistry in the Member State of establishment and performance of administrative tasks require an appropriate knowledge of the language of that State.

60 However, it is important that language requirements designed to ensure that the dental practitioner will be able to communicate effectively with his patients, whose mother tongue is that of the Member State concerned, and with the administrative authorities and the professional bodies of that State do not go beyond what is necessary to attain that objective. In this respect, it is in the interest of patients whose mother tongue is not the national language that there exist a certain number of dental practitioners who are also capable of communicating with such persons in their own language.

61 The answer to the third question must therefore be that the competent authorities of a Member State may make the appointment, as a social security scheme dental practitioner, of a national of another Member State who is established in the first Member State and authorised to practise there but has none of the qualifications mentioned in Article 3 of Directive 78/686, conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the Member State of establishment.

Costs

62 The costs incurred by the German, Danish, Greek, Spanish, French, Italian, Swedish 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 proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Landgericht Düsseldorf by order of 8 December 1997, hereby rules:

1. **Community law does not preclude a public-law body, in addition to the Member State itself, from being liable to make reparation for loss and damage caused to individuals as a result of measures which it took in breach of Community law.**

2. **In order to determine whether there is a serious breach of Community law, within the meaning of the case-law of the Court, account must be taken of the extent of the discretion enjoyed by the Member State concerned. The**

existence and the scope of that discretion must be determined by reference to Community law and not by reference to national law.

3. The competent authorities of a Member State may make the appointment, as a social security scheme dental practitioner, of a national of another Member State who is established in the first Member State and authorised to practise there but has none of the qualifications mentioned in Article 3 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the Member State of establishment.

Rodríguez Iglesias Edward Sevón Schintgen

Kapteyn Gulmann Puissochet Hirsch

Jann Ragnemalm Wathelet

Delivered in open court in Luxembourg on 4 July 2000.

R. Grass G.C. Rodríguez Iglesias

Registrar President