

(2003/C 52 E/224)

WRITTEN QUESTION E-2699/02**by Manuel Pérez Álvarez (PPE-DE) to the Commission**

(26 September 2002)

Subject: Obstacles to the free movement of medical professionals

A number of young Spanish medical graduates have in recent years been doing the final stage of their academic and clinical training as public health supplementary interns and assistant doctors in Portugal (the *Saúde Pública do internato complementar e médicos assistentes de Saúde Pública em Portugal*) in Oliveira do Douro, Viana do Castelo, Paredes, Sta. Maria da Feira, Vila do Conde, Caminha, Braga, Melgaço, Chaves, Moncao and Campanha.

Once they have finished their education and training, including specific training in working as health authority employees (Portaria No 327/96 of 2 August), however, they find themselves prevented from obtaining appointments as 'Autoridades de Saúde' because they are foreigners.

At the same time, according to my information, there exists on the one hand some evidence that non-Portuguese citizens are holding jobs as health authority doctors, and on the other, evidence that doctors without specific training are occupying such posts, even if only on temporary basis.

Is the Commission aware of the situation of these medical professionals seeking to exercise their profession, in a neighbouring country, where they have carried out their specialist professional training?

Does the Commission share the criterion that the so-called *Autoridade de Saúde* doctors should be exclusively specialist professionals, given the definition of their work set forth in Decreto-Lei 336/96 (Diário da República 229 of 29 September 1993)?

What steps have been taken or will be taken with regard to this situation, which may constitute an infringement of the principle of free movement of workers within the European Union?

Answer given by Mrs Diamantopoulou on behalf of the Commission

(21 October 2002)

The Commission was not aware of the situation to which the Honourable Member refers.

As regards access by Community nationals to the public service in other Member States, Article 39(4) of the EC Treaty establishes a derogation from the principle of free movement of workers within the Community, laying down that 'the provisions of this Article shall not apply to employment in the public service'. The Court of Justice has reiterated the need for a restrictive interpretation of this derogation. In a number of judgements, it has stated that the posts referred to by this provision are those relating to specific public service activities, i.e. those involving the exercise of public authority and the safeguarding of the general interests of the Member State, which also includes the interests of the public authorities.

It is for the national authorities, on the basis of the criteria laid down and under the supervision of the Court of Justice, to assess the applicability of Article 39(4) of the EC Treaty in each particular case in relation to the tasks and responsibilities of each specific post.

According to the information available to the Commission, the Portuguese legislation in question (Decreto-Lei No 336/93) makes no reference to the requirement to be of Portuguese nationality in order to work for the Portuguese health authority.

However, if such a condition were laid down in practice, it could be contrary to the criteria laid down in the case law of the Court of Justice. The Commission would require more precise information on the specific cases to which the Honourable Member refers in order to intervene, if appropriate, with the Portuguese authorities. To this end, the persons concerned could approach the Employment and Social Affairs Directorate-General directly.

As regards the requirement for doctors in the Portuguese health authority to be exclusively specialists, each Member State is free to organise its own public administration. The Commission cannot therefore intervene.