



Reports of Cases

Case C-475/11 Kostas Konstantinides

(Request for a preliminary ruling from the Berufsgesicht für Heilberufe bei dem Verwaltungsgericht Gießen)

(Freedom to provide medical services — Service provider travelling to another Member State to provide the service — Applicability of the rules of professional conduct of the host Member State, in particular those relating to fees and advertising)

Summary — Judgment of the Court (Fourth Chamber), 12 September 2013

1. *Freedom to provide services — Restrictions — Medical services — Recognition of professional qualifications — Directive 2005/36, Art 5. — Scope — Rules of conduct relating to fees and advertising — Not included — Only rules with a direct link to the practice of medicine and the protection of patients applicable*

(Art. 56 TFEU; European Parliament and Council Directive 2005/36, Art. 5(3))

2. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Identification of the relevant provisions of EU law — Reformulation of the questions — Providing the national court with full guidance on the interpretation of EU law*

(Art. 267 TFEU)

3. *Freedom to provide services — Restrictions — Prohibition — Scope*

(Art. 56 TFEU)

4. *Freedom to provide services — Restrictions — Medical services — Whether the rules of conduct relating to fees and advertising apply to service providers established in other Member States — Assessment by the national court — Elements to be taken into consideration — Justification by overriding reasons in the general interest and in conformity with the principles of proportionality and non-discrimination*

(Art. 56 TFEU)

5. *Questions referred for a preliminary ruling — Admissibility — Questions referred without sufficient information on the factual and legislative context*

(Art. 267 TFEU)

6. *Freedom to provide services — Restrictions — Medical services — Recognition of professional qualifications — Directive 2005/36, Art 6. — Obligation of a service provider established in another Member State to comply with the rules of conduct and disciplinary procedures of the host Member State — No such obligation*

(European Parliament and Council Directive 2005/36, Arts 6(a), and 5(3))

1. Article 5(3) of Directive 2005/36 on the recognition of professional qualifications must be interpreted as meaning that rules set out in the Code of professional conduct for doctors in a federal State of a Member State, under which, firstly, fees must be reasonable and, unless provided otherwise by law, calculated on the basis of the official Regulation on doctors' fees, and, secondly, doctors are prohibited from engaging in unprofessional advertising, do not fall within its material scope.

It appears from the object and purpose and from the general scheme of Directive 2005/36 that professional rules are covered by Article 5(3) of the directive only if they are directly linked to the actual practice of medicine and failure to observe them harms the protection of patients.

It is, however, for the referring court to ascertain whether the rules relating to fees and advertising constitute a restriction within the meaning of Article 56 TFEU, and, if so, whether they pursue an objective in the public interest, are appropriate to ensuring that it is attained, and do not go beyond what is necessary for attaining it.

(see paras 36, 39, 40, 41, 53, operative part 1)

2. See the text of the decision.

(see para. 42)

3. See the text of the decision.

(see paras 44, 45, 47)

4. Rules set out in the Code of professional conduct for doctors in a federal State of a Member State, under which, firstly, fees must be reasonable and, unless provided otherwise by law, calculated on the basis of the official Regulation on doctors' fees, and, secondly, doctors are prohibited from engaging in unprofessional advertising are capable, under certain conditions, of constituting a restriction on the freedom to provide services within the meaning of Article 56 TFEU.

In that regard, the existence of a restriction within the meaning of the Treaty cannot be deduced from the mere fact that doctors established in Member States other than the host Member State have to submit, for calculating their fees for services provided in their territory, to the rules applicable in that territory. However, in the absence of any flexibility, the application of rules concerning the calculation of fees, which would be liable to have a deterrent effect on doctors from other Member States, would constitute a restriction within the meaning of the Treaty. Such a restriction may be justified by an objective or overriding interest in the general interest, such as the protection of the health and life of humans. It is for the referring court to examine whether those rules genuinely reflect a concern to attain the objective pursued in a consistent and systematic manner. The analysis of proportionality requires account to be taken in particular of the severity of the penalty envisaged.

In so far as concerns unprofessional advertising, a prohibition concerning the unprofessional nature of the content of an advertisement, which suffers from a certain ambiguity, is liable to constitute an obstacle to the relevant freedom to provide medical services. Nonetheless, the application in non-discriminatory fashion to a medical professional established in another Member State of national or regional rules defining, by reference to a criterion of professional ethics, the conditions under

which those professionals may promote their activities in the field in question may be justified by overriding considerations in the public interest relating to public health and consumer protection, provided that — this being for the referring court to ascertain — the application of any penalties to a professional making use of the freedom to provide services is proportionate to the conduct of which he is accused.

(see paras 48-52, 56-58, operative part 1)

5. See the text of the decision.

(see paras 61, 62)

6. Article 6(a) of Directive 2005/36 on the recognition of professional qualifications must be interpreted as not laying down the rules of conduct or disciplinary procedures to which a service provider who travels to the territory of the host Member State to pursue his profession on a temporary and occasional basis may be subject, but as merely stating that Member States may provide either for automatic temporary registration with or for *pro forma* membership of a professional organisation or body, in order to facilitate the application of disciplinary provisions in accordance with Article 5(3) of that directive.

(see paras 63, 64, operative part 2)