

JUDGMENT OF THE COURT (Fifth Chamber)
25 February 1999 *

In Case C-131/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale, Bologna, Italy, for a preliminary ruling in the proceedings pending before that court between

Annalisa Carbonari and Others

and

Università degli Studi di Bologna,

Ministero della Sanità,

Ministero dell'Università e della Ricerca Scientifica,

Ministero del Tesoro,

on the interpretation of Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to

* Language of the case: Italian.

facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1982 L 43, p. 21),

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, acting for the President of the Chamber, C. Gulmann, D. A. O. Edward (Rapporteur), L. Sevón and M. Wathelet, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Annalisa Carbonari and Others, by Giuseppe Lerro, of the Bologna Bar, Roberto Mastroianni, of the Cosenza Bar, and Paolo Piva, of the Venice Bar,
- the Italian Government, by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, *Avvocato dello Stato*,
- the Spanish Government, by Luis Pérez de Ayala Becerril, *Abogado del Estado*, acting as Agent,

— the Commission of the European Communities, by Enrico Traversa and Berend Jan Drijber, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Annalisa Carbonari and Others, represented by Paolo Piva and Giuseppe Lerro, of the Italian Government, represented by Oscar Fiumara, of the Spanish Government, represented by Nuria Diaz Abad, Abogado del Estado, acting as Agent, and of the Commission, represented by Enrico Traversa, at the hearing on 7 May 1998,

after hearing the Opinion of the Advocate General at the sitting on 2 July 1998,

gives the following

Judgment

- ¹ By order of 2 December 1996, received at the Court on 1 April 1997, the Pretura Circondariale (District Magistrates' Court), Bologna, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363/EEC concerning the coordination of provisions laid down by law,

regulation or administrative action in respect of activities of doctors (OJ 1982 L 43, p. 21).

- 2 That question was raised in proceedings between Anna Carbonari and 121 other applicants, and the Università degli Studi di Bologna, the Ministero della Sanità, the Ministero dell'Università e della Ricerca Scientifica and the Ministero del Tesoro on the subject of the right of trainee medical specialists to 'appropriate remuneration' during their training.

The Community legislation

- 3 Council Directive 75/362/EEC of 16 June 1975 (OJ 1975 L 167, p. 1, 'the "recognition" directive') concerns the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine and includes measures to facilitate the effective exercise of the right of establishment and freedom to provide services. Council Directive 75/363/EEC of 16 June 1975 (OJ 1975 L 167, p. 14, 'the "coordination" directive'), for its part, concerns the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors. Those directives have been amended by *inter alia* Directive 82/76.
- 4 The 'recognition' directive draws a distinction between three situations for the recognition of specialist diplomas. Where the specialty in question is common to all Member States and is listed in Article 5(2) of that directive, recognition is automatic (Article 4). Where the specialty is peculiar to two or more Member States and is mentioned in Article 7(2), recognition is automatic between them (Article 6). Finally, Article 8 provides that, for specialties that are not listed either in Article 5 or in Article 7, the host Member State may require nationals of Member States to fulfil the conditions of training laid down in that respect by its own domestic law, taking

into account, however, the training periods completed by those nationals and attested by the award of some evidence of a training qualification by the competent authorities of the Member State of origin or the Member State from which the foreign national comes, provided such training periods correspond to those required in the host Member State for the specialised training in question.

- 5 The 'coordination' directive introduces some harmonisation of conditions relating to training and access to the different medical specialties with a view to mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialised medicine.
- 6 The second recital in the preamble to that directive explains that, in order to coordinate the requirements for training in specialised medicine, it is necessary to lay down 'certain minimum criteria ... concerning the right to take up specialised training, the minimum training period, the method by which such training is given and the place where it is to be carried out, as well as the supervision to which it should be subject' and, in the last phrase, adds that 'these criteria only concern the specialities common to all the Member States or to two or more Member States'.
- 7 Article 2(1) of that directive, as amended by Article 9 of Directive 82/76, lays down, in particular, that the training leading to a diploma, certificate or other evidence of formal qualifications in specialised medicine must meet the requirements referred to therein. It is required, *inter alia*, under subparagraph (c), that the training 'shall be a full-time course supervised by the competent authorities or bodies pursuant to point 1 of the Annex hereto'.

- 8 The Annex to the directive, added by Article 13 of Directive 82/76 and entitled 'Characteristics of full-time and part-time training of specialists', provides:

'1. Full-time training of specialists

Such training shall be carried out in specific posts recognised by the competent authority.

It shall involve participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the duration of the standard working week and throughout the year according to provisions agreed by the competent authorities. Accordingly these posts shall be subject to appropriate remuneration.

Training may be interrupted for reasons such as military service, secondment, pregnancy or sickness. The total duration of the training shall not be reduced by reason of any interruption.

...'

- 9 Articles 4 and 5 of the 'coordination' directive fix the minimum length of the specialised training courses leading to diplomas, certificates or other evidence of formal qualifications referred to in Articles 5 and 7 of the 'recognition' directive, and which are common to all the Member States or to two or more of them.

- 10 Article 16 of Directive 82/76 lays down that Member States are to adopt by law, regulation or administrative action the provisions necessary to comply with the directive by 31 December 1982 at the latest, and are forthwith to inform the Commission thereof.
- 11 After the facts which gave rise to the main proceedings, the 'recognition' and 'coordination' directives and Directive 82/76 were repealed and replaced 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).

The national legislation

- 12 The 'recognition' and 'coordination' directives were transposed into Italian domestic law by Law No 217 of 22 May 1978 (*Gazzetta Ufficiale della Repubblica Italiana* No 146 of 29 May 1978).
- 13 By judgment of 7 July 1987 in Case 49/86 *Commission v Italy* [1987] ECR 2995, the Court of Justice declared that, by failing to adopt within the prescribed period the provisions necessary to comply with Directive 82/76, the Italian Republic had failed to fulfil its obligations under the EEC Treaty.
- 14 Following that judgment, Directive 82/76 was implemented by Legislative Decree No 257 of 8 August 1991 (GURI No 191 of 16 August 1991), which came into force 15 days after the date of publication.

- 15 Article 4 of Legislative Decree No 257 determines the rights and obligations of trainee medical specialists, and Article 6 thereof establishes a study bursary for their benefit.

- 16 Article 6(1) provides:

‘Those admitted to specialised schools ... in connection with a full-time engagement for their training shall receive, throughout the duration of the course, excluding periods when the specialisation is suspended, a study bursary which in 1991 shall be ITL 21 500 000. From 1 January 1992, this amount shall be indexed annually on the basis of the anticipated rate of inflation and shall be revised every three years by Decree made by the Minister for Health ... on the basis of the improvement in the minimum wage scale applicable to the contracts of salaried medical staff employed by the national health service.’

- 17 Finally, Article 8(2) of the Legislative Decree specifies that the provisions thereof are to apply from the beginning of the academic year 1991/92.
- 18 It is clear from the order for reference that that provision has been interpreted as meaning that the study bursary established by Legislative Decree No 257 does not apply, even after the academic year 1991/92, to trainee medical specialists admitted before that time.

The main proceedings

- 19 The applicants in the main proceedings all stated that they were qualified in medicine. They were registered during the academic year 1990/91 in specialist schools of the Faculties of Medicine of the University of Bologna, in several disciplines, such as cardiology, obstetrics, neurology, psychiatry, paediatrics, urology, ophthalmology, occupational medicine and other fields.
- 20 Since they had not received any remuneration for that academic year, the applicants in the main proceedings claimed, *inter alia*, in their application lodged on 30 July 1992 before the Pretura Circondariale, Bologna, that, having regard to the terms of Article 2(1)(c) of the 'coordination' directive and point 1 of the Annex thereto, as amended by Directive 82/76, they were entitled to 'appropriate remuneration' during their specialist training.
- 21 The defendants in the main proceedings alleged *inter alia* that the directives in question could not be considered to have direct effect since their provisions did not give rise to clear, precise and unconditional obligations on the part of the State concerning remuneration for trainee medical specialists.
- 22 Considering that the outcome of the dispute depended on the interpretation of the Community legislation and, in particular, of Directive 82/76, the Pretura Circondariale, Bologna, decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must the provision of Directive 82/76/EEC providing that the training of trainee medical specialists is to be "subject to appropriate remuneration" be interpreted, in so far as no specific provisions have been adopted by the Italian Republic within

the prescribed periods, as having direct effect in favour of trainee medical specialists as against the administrative authorities of the Italian Republic, and does it confer on trainee medical specialists the right to appropriate payment in respect of all the training duties undertaken in the departments entrusted with training by the State, with a corresponding obligation on those administrative authorities, including the University of Bologna, to pay such remuneration?’

- 23 By that question, the national court seeks to ascertain whether, in the absence of implementing measures taken within the time-limits, Article 2(1)(c) of the ‘coordination’ directive and point 1 of the Annex thereto, as amended by Directive 82/76, which impose the obligation to provide appropriate remuneration for periods of training in medical specialties are, as regards their content, unconditional and sufficiently precise for trainee medical specialists to be able to rely on that obligation against the administrative authorities of a Member State before the national courts.
- 24 First, it is necessary to consider the sphere of application of Article 2(1)(c) of the ‘coordination’ directive and point 1 of the Annex thereto, as amended by Directive 82/76, in order to determine the medical specialties in respect of which trainee specialists enjoy the right to appropriate remuneration during their training period.
- 25 The applicants in the main proceedings submit that, even if some of the specialties in question are not listed in the ‘recognition’ directive as being common to all Member States or to two or more of them, it follows from the principle of equality of treatment, which is applicable to identical or analogous situations, and the principle of the recognition of specialties that that circumstance cannot preclude the existence of an obligation to pay appropriate remuneration of the same kind as that which is required by the Community legislation.

- 26 By contrast, the Spanish Government and the Commission take the view, by reference to Case C-277/93 *Commission v Spain* [1994] ECR I-5515, that the right to remuneration during the training period concerns only the specialisations listed in Articles 5 and 7 of the 'recognition' directive.
- 27 In that respect, it is sufficient to point out that the Court of Justice has already held in *Commission v Spain*, cited above, paragraph 20, that the requirement to provide remuneration for the periods of training in specialised medicine laid down in Article 2(1)(c) of the 'coordination' directive, applies only to medical specialties which are common to all the Member States or to two or more Member States and are mentioned in Article 5 or Article 7 of the 'recognition' directive.
- 28 Since those provisions list, for the specialist training courses concerned, both the designations in force in the Member States and the competent authorities or bodies, it is for the national court to determine, amongst the applicants in the main proceedings, which belong to the category of doctors on one of those specialist training courses who, under the 'coordination' directive, as amended by Directive 82/76, enjoy the right to appropriate remuneration during their training period.
- 29 Second, the Italian Government submits that only compliance with certain rules, which must be determined by the national legislature, can enable trainee medical specialists to complete full-time training in accordance with the terms of the 'coordination' directive and, therefore, to receive the appropriate remuneration.
- 30 The Spanish Government takes the view, more specifically, that the right to remuneration is not a characteristic of the training envisaged by the 'coordination' directive with a view to coordinating the different systems. That right is merely a consequence of the characteristics of that training. It follows that the right is dependent, first, on positive action by the national authorities to put in place a training system

which complies with the 'coordination' directive and, second, on the requirement that medical specialists complete full-time training in accordance with the Annex to that directive.

- 31 It should be recalled, at the outset, that the representative of the Italian Government maintained at the hearing that, since the academic year 1991/92, the training of medical specialists in Italy has been conducted in accordance with the requirements of the 'recognition' and 'coordination' directives and Directive 82/76.
- 32 As regards the academic years before 1991/92, the representative of the Italian Government pointed out that trainee medical specialists were not required, at that time, to comply with the full-time rule.
- 33 It should be noted that point 1 of the Annex to the 'coordination' directive, as amended by Directive 82/76, is explicit and unconditional in requiring participation in all the medical activities of the department where the training is carried out, including on-call duties, so that the trainee specialist devotes to this practical and theoretical training all his professional activity throughout the duration of the standard working week and throughout the year.
- 34 Although the same provision requires that the rules be determined by the competent authorities, the requirements of full-time training listed under that point are sufficiently precise to enable the national court to determine which of the applicants in the main proceedings belonging to the category of trainee specialists fulfilled the requirements of full-time training in specialised medicine in accordance with the 'coordination' directive and Directive 82/76 prior to the academic year 1991/92.

- 35 Third, the applicants in the main proceedings submit that, in respect of the content of the obligation to provide remuneration for periods of training in medical specialties, the national court may take account of the national legislation adopted before or after Directive 82/76 in order to comply with the spirit and the letter of that directive. In their view, having regard to the terms of Legislative Decree No 257, both the content of the right to appropriate remuneration for trainee medical specialists and the authority which is bound by the employment relationship to pay that remuneration are perfectly identified.
- 36 According to the Italian and Spanish Governments, the provisions in question are not sufficiently precise and unconditional. They are therefore not capable of conferring directly on trainee medical specialists the right to appropriate remuneration in the absence of implementing measures.
- 37 The Commission submits that, although the provisions in question lay down a clear and precise obligation consisting of the payment of a sum of money by way of consideration for the salaried work carried out in the university or hospital centres approved for that purpose by the competent national authorities, the Community legislature implicitly left to the competent bodies of the Member States or to national collective agreements the setting of the levels of payment which are 'appropriate' for the quantity and quality of the activities of the trainee specialists, so that that element does not satisfy the requirement of unconditionality.
- 38 In that regard, it is common ground that the aim of the 'recognition' directive is, in particular, the mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialised medicine and that, in order to enable the Member States to undertake that mutual recognition with the aim of putting all members of the profession who are nationals of the Member States on an equal footing within the Community, the 'coordination' directive introduces some harmonisation of the requirements for training in the different medical specialties and access to such training.

- 39 The minimum criteria for training in specialised medicine include, in particular, those concerning the minimum training period, the method by which such training is given and the place where it is to be carried out, the supervision to which it should be subject, as well as the requirement to pay appropriate remuneration.
- 40 As regards the respect for the minimum criteria for training, it should be observed that the Community legislature, by insisting both on the minimum training period and on the fact that the training should be full-time, considered that the level of training in specialised medicine should not be compromised by, in particular, the parallel pursuit, in a private capacity, of a paid professional activity. That is why Directive 82/76 establishes the obligation to provide remuneration for periods of training in medical specialties.
- 41 That obligation is thus entirely linked to fulfilling the requirements for training in specialised medicine which themselves enable the Member States to undertake the mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialised medicine in accordance with the 'recognition' directive.
- 42 It is therefore clear from the system of the mutual recognition of diplomas, certificates and other evidence of formal qualifications in specialised medicine that the Member State in which the training in specialised medicine is undertaken must guarantee that that training fulfils all the requirements laid down in the 'coordination' directive and Directive 82/76 and that the trainee specialists receive remuneration.
- 43 In the absence of such a guarantee, the authorities of the other Member States can no longer have faith in the equal value of the legislation of the Member State in question in the field of training in specialised medicine, which thus undermines the

objective of the 'recognition' and 'coordination' directives and Directive 82/76. Furthermore, where a Member State does not make the award of diplomas, certificates and other evidence of formal qualifications in specialised medicine subject to the training requirements laid down in the 'coordination' directive and Directive 82/76, medical specialists who have undertaken such training do not belong to the category of doctors who may benefit from the system of the mutual recognition of diplomas, certificates and other evidence of formal qualifications established by the 'recognition' and 'coordination' directives and Directive 82/76.

- 44 It is in that context that Article 2(1)(c) of the 'coordination' directive and point 1 of the Annex thereto, as amended by Directive 82/76, impose an obligation on Member States, in respect of doctors liable to benefit from the system of mutual recognition, to provide remuneration for periods of training in medical specialties in so far as they fall within the scope of the directive. That obligation is, in itself, unconditional and sufficiently precise.
- 45 However, it is common ground that the 'coordination' directive and Directive 82/76 do not contain any Community definition either of the remuneration which is to be regarded as appropriate or of the methods by which that remuneration is to be fixed. Such definitions are in principle a matter for the Member States, which must adopt specific implementing measures in the field.
- 46 Lastly, as to which institution bears the obligation to pay the appropriate remuneration, it is clear, as the Commission pointed out, that neither the 'coordination' directive nor Directive 82/76 identifies the body liable to provide remuneration for

the periods of training in medical specialties and that, as a consequence, Member States enjoy a broad discretion in determining that body.

- 47 In those circumstances, Article 2(1)(c) of the 'coordination' directive and point 1 of the Annex thereto, as amended by Directive 82/76, are not, in that respect, unconditional; they do not enable the national court to determine the body liable to pay the appropriate remuneration or the level thereof.
- 48 However, it should be recalled that, in accordance with case-law which has been settled since Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 26, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts. As is clear from the settled case-law of the Court of Justice, in applying national law and in particular the provisions of a law which, as in the main proceedings, were specifically introduced in order to implement a directive, the national court is required to interpret its national law, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby to comply with the third paragraph of Article 189 of the EC Treaty (see Case C-106/89 *Marleasing v La Comercial Internacional de Alimentación* [1990] ECR I-4135, paragraph 8, and Case C-334/92 *Wagner Miret v Fondo de Garantía Salarial* [1993] ECR I-6911, paragraph 20).
- 49 In those circumstances, it is for the national court to determine to what extent all provisions of national law, and more specifically, for the period after their entry into force, the provisions of a law adopted in order to implement Directive 82/76, can be interpreted after the date of entry into force of those provisions in the light of the wording and the purpose of that directive in order to achieve the result pursued by it.

- 50 In the case at issue in the main proceedings, it is therefore for the national court, in the context of the foregoing considerations, to decide whether the level of appropriate remuneration and the institution on which is imposed the obligation to pay that remuneration may be determined on the basis of all provisions of national law.
- 51 The Italian Government and the Commission also considered the possible existence of liability on the part of the Italian State for the damage resulting from the breach of the obligations imposed on it by Directive 82/76.
- 52 In the absence of a question submitted for a preliminary ruling on that point, it is sufficient to recall that the Court of Justice has repeatedly held that, if the result prescribed by a directive cannot be achieved by way of interpretation, Community law requires the Member States to make good damage caused to individuals through failure to transpose a directive, provided that three conditions are fulfilled: the rule of law infringed was intended to confer rights on individuals and the content of those rights can be identified; the breach is sufficiently serious; and there is a direct causal link between the breach of the State's obligation and the damage suffered by the persons affected (see, *inter alia*, Case C-91/92 *Faccini Dori v Recreb* [1994] ECR I-3325, paragraph 27, and Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others v Federal Republic of Germany* [1996] ECR I-4845, paragraphs 21 and 23).
- 53 In that context, the Court of Justice held in Joined Cases C-94/95 and C-95/95 *Bonifaci and Others v INPS* [1997] ECR I-3969 that retroactive application in full of the measures implementing a directive enables the harmful consequences of its belated transposition to be remedied, provided that the directive has been properly transposed. However, it is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper

application in full of the measures implementing the directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the directive with the result that such loss must also be made good.

54 In those circumstances, the answer to the question referred must be that Article 2(1)(c) of the 'coordination' directive and point 1 of the Annex thereto, as amended by Directive 82/76, must be interpreted as follows:

- the obligation to provide appropriate remuneration for periods of training in specialised medicine is binding only in respect of the medical specialties which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of the 'recognition' directive;
- that obligation is unconditional and sufficiently precise in so far as it requires, for a medical specialist to be able to benefit from the system of mutual recognition established by the 'recognition' directive, that his training be full-time and remunerated;
- that obligation in itself does not, however, enable the national court to determine which body is liable to pay the appropriate remuneration or the level thereof.

The national court is required, however, when it applies provisions of national law adopted either before or after a directive, to interpret them as far as possible in the light of the wording and the purpose of that directive.

Costs

- 55 The costs incurred by the Italian and Spanish 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 (Fifth Chamber),

in answer to the question referred to it by the Pretura Circondariale, Bologna, by order of 2 December 1996, hereby rules:

Article 2(1)(c) of 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 and point 1 of the Annex thereto, as amended by Council Directive 82/76/EEC of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363, must be interpreted as follows:

— the obligation to provide appropriate remuneration for periods of training in specialised medicine is binding only in respect of the medical specialties

which are common to all the Member States or to two or more of them and are mentioned in Article 5 or Article 7 of Council Directive 75/362/EEC of 16 June 1975;

- that obligation is unconditional and sufficiently precise in so far as it requires, for a medical specialist to be able to benefit from the system of mutual recognition established by Directive 75/362, that his training be full-time and remunerated;
- that obligation in itself does not, however, enable the national court to determine which body is liable to pay the appropriate remuneration or the level thereof.

The national court is required, however, when it applies provisions of national law adopted either before or after a directive, to interpret them as far as possible in the light of the wording and the purpose of that directive.

Moitinho de Almeida

Gulmann

Edward

Sevón

Wathelet

Delivered in open court in Luxembourg on 25 February 1999.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber