

REFERENCE to the Court under [Article 267 TFEU] by the Commissie van Beroep Huisartsgeneeskunde [Appeals Committee for General Medicine], The Hague, for a preliminary ruling in the proceedings pending before that committee between

C. BROEKMEULEN, a doctor practising at Kerkdriel,

and

HUISARTS REGISTRATIE COMMISSIE [General Practitioners Registration Committee],

on the interpretation of Council Directive 75/362/EEC of 16 June 1975 (Official Journal 1975, L 167, p. 1) concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, and Council Directive 75/363/EEC of 16 June 1975 (Official Journal 1975, L 167, p. 14) concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keefe, A. Touffait, O. Due, U. Everling and A. Chloros, Judges,

Advocate General: G. Reischl

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Decision

- 1 By an order dated 21 October 1980 which was received at the Court on 11 November 1980 the Commissie van Beroep Huisartsgeneeskunde {Appeals Committee for General Medicine, hereinafter referred to as "the Appeals Committee"}, which sits in The Hague, referred to the Court for a preliminary ruling under [Article 267 TFEU] a question as to the interpretation of Council Directive 75/362 of 16 June 1975 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, and 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 (Official Journal 1975, L 167, pp. 1 and 14).
- 2 The question was raised in the context of an appeal lodged by a doctor of Netherlands nationality, Dr Broekmeulen, who, having obtained a diploma of doctor of medicine, surgery and obstetrics at the Catholic University of Louvain, Belgium, was authorized by the Netherlands Secretary of State for Health and the Environment to practise medicine in the Netherlands; however, the Huisarts Registratie Commissie (General Practitioners Registration Committee, hereinafter referred to as "the Registration Committee") refused to register him as a huisarts [general practitioner].
- 3 It is apparent from the documents in the case and from the evidence given by the parties that the Registration Committee and the Appeals Committee are bodies established by the Royal Netherlands Society for the Promotion of Medicine (hereinafter referred to as "the Society"). The Society is constituted as a private association under Netherlands law and the great majority of doctors practising in the

Netherlands belong to it; one of its aims is to improve the training of doctors, including post-university education, from a theoretical and practical point of view. The internal rules of the Society include provisions concerning the recognition and registration of medical specialists, experts in social medicine and general practitioners; according to the statutes of the Society, those provisions of its internal rules may be amended only in consultation with the ministers whose departments are responsible for higher education and public health respectively.

- 4 The recognition and registration of general practitioners are governed by Articles 1101 to 1135 of the internal rules of the Society. Those rules provide for three bodies to be set up: the College voor Huisangeneeskunde [Council for General Medicine], whose main function is to lay down the requirements for the training of general practitioners; the Registration Committee, which is essentially responsible for registering as general practitioners those doctors who request such registration, provided that they satisfy the requirements laid down by the Council for General Medicine; and the Appeals Committee, which is charged with hearing appeals against decisions of the Registration Committee.
- 5 In the present case the Registration Committee declined to register Dr Broekmeulen as a general practitioner because he did not satisfy the conditions laid down in the orders of the Council for General Medicine. In accordance with those orders Dr Broekmeulen would have had to undergo a year's training in general medicine, as is the case for Netherlands doctors holding a university diploma of doctor of medicine awarded by a Netherlands university, in order to qualify for enrolment on the register of general practitioners.
- 6 The Registration Committee took the view that the orders of the Council for General Medicine expressly provided that nationals of other Member States who hold a diploma of doctor of medicine awarded by one of the other Member States and recognized by virtue of Directives 75/362/EEC and 75/363/EEC and who have been authorized to practise medicine in the Netherlands, must at their request be enrolled on the register of general practitioners, but that that exception did not apply to Dr Broekmeulen on account of his Netherlands nationality.
- 7 That decision was challenged before the Appeals Committee, which stayed the proceedings in order to refer the following question to the Court for a preliminary

ruling: "Does it follow from Directives 75/362/EEC and 75/363/EEC (Official Journal L 167 of 30 June 1975) that a Netherlands national who has obtained in Belgium the Wettelijk Diploma van Doctor in de Genees-, Heel- en Verloskunde (diploma of doctor of medicine, surgery and obstetrics) and who is consequently entitled to practise in Belgium as a general practitioner has the right, on becoming established in the Netherlands, to be enrolled on the register of recognized general practitioners of the Royal Netherlands Society for the Promotion of Medicine without first having undergone training in the Netherlands as a general practitioner?" The Appeals Committee stated that by virtue of mandatory provisions of Netherlands law enrolment on the said register is possible only after that training has been undergone and that a doctor may practise in the Netherlands as a general practitioner only after enrolment on the said register.

The applicability of [Article 267 TFEU]

- 8 The Appeals Committee is a body set up by the Society and it is appropriate therefore to deal first with the question whether it ought to be considered as a "court or tribunal" of a Member State within the meaning of [Article 267 TFEU].
- 9 According to the internal rules of the Society, the Appeals Committee, appointed for a period of five years, is composed of three members appointed by the Netherlands medical faculties, three members appointed by the Board of the Society and three members, including the chairman (preferably a high-ranking judge), who are appointed by the ministers responsible for higher education and health respectively. It may therefore be seen that the composition of the Appeals Committee entails a significant degree of involvement on the part of the Netherlands public authorities.
- 10 Pursuant to those rules, the Appeals Committee determines disputes on the adversarial principle, that is to say having heard the Registration Committee and the doctor concerned, as well as his adviser or lawyer, if necessary.
- 11 The Netherlands Government stated that, in its opinion, the Appeals Committee cannot be considered a court or tribunal under Netherlands law. However, it pointed out that that fact is not decisive for the interpretation of [Article 267 TFEU] and

suggested that the question whether a body such as the Appeals Committee is entitled to refer a case to the Court under that provision should be determined in the light of the function performed by that body within the system of remedies available to those who consider that their rights under [Union] law have been infringed.

- 12 In this regard, the order for reference mentions a Royal Decree of 1966, the decree concerning benefits ("Verstrekingenbesluit"), adopted under the Sickness Fund Law; for the purposes of that decree the term "general practitioner" refers exclusively to a doctor enrolled on the register of general practitioners maintained by the Society. The practice of a doctor who is not enrolled on the register would thus not be recognized by the sickness insurance schemes. Under those circumstances a doctor who is not enrolled on the register is unable to treat, as a general practitioner, patients covered by the social security system. In fact, private practice is likewise made impossible by the fact that private insurers also define the term "general practitioner" in their policies in the same way as the provisions of the decree concerning benefits.
- 13 A study of the Netherlands legislation and of the statutes and internal rules of the Society shows that a doctor who intends to establish himself in the Netherlands may not in fact practise either as a specialist, or as an expert in social medicine, or as a general practitioner, without being recognized and registered by the organs of the Society. In the same way it may be seen that the system thus established is the result of close cooperation between doctors who are members of the Society, the medical faculties and the departments of State responsible for higher education and health.
- 14 It is thus clear that both in the sector covered by the social security system and in the field of private medicine the Netherlands system of public health operates on the basis of the status accorded to doctors by the Society and that registration as a general practitioner is essential to every doctor wishing to establish himself in the Netherlands as a general practitioner.
- 15 Therefore a general practitioner who avails himself of the right of establishment and the freedom to provide services conferred upon him by [Union] law is faced with the necessity of applying to the Registration Committee established by the Society, and, in the event of his application's being refused, must appeal to the Appeals Committee. The Netherlands Government expressed the opinion that a doctor who is not a member of the Society would have the right to appeal against such a refusal

to the ordinary courts, but stated that the point had never been decided by the Netherlands courts. Indeed all doctors, whether members of the Society or not, whose application to be registered as a general practitioner is refused, appeal to the Appeals Committee, whose decisions to the knowledge of the Netherlands Government, have never been challenged in the ordinary courts.

16 In order to deal with the question of the applicability in the present case of [Article 267 TFEU], it should be noted that it is incumbent upon Member States to take the necessary steps to ensure that within their own territory the provisions adopted by the [Union] institutions are implemented in their entirety. If, under the legal system of a Member State, the task of implementing such provisions is assigned to a professional body acting under a degree of governmental supervision, and if that body, in conjunction with the public authorities concerned, creates appeal procedures which may affect the exercise of rights granted by [Union] law, it is imperative, in order to ensure the proper functioning of [Union] law, that the Court should have an opportunity of ruling on issues of interpretation and validity arising out of such proceedings.

17 As a result of all the foregoing considerations and in the absence, in practice, of any right of appeal to the ordinary courts, the Appeals Committee, which operates with the consent of the public authorities and with their cooperation, and which, after an adversarial procedure, delivers decisions which are in fact recognized as final, must, in a matter involving the application of [Union] law, be considered as a court or tribunal of a Member State within the meaning of [Article 267 TFEU]. Therefore, the Court has jurisdiction to reply to the question asked.

The question submitted

18 In the question referred to the Court the Appeals Committee seeks in the first place to ascertain whether a Netherlands national holding a Belgian diploma listed under Article 3 of Directive 75/362/EEC and recognized in every Member State by virtue of Article 2 of that directive may avail himself of those provisions if he intends to establish himself in the Netherlands.

- 19 Under Article 2 of the directive each Member State is to recognize the diplomas listed in Article 3 "awarded to nationals of Member States by the other Member States". It follows from that wording that the provision may be invoked in one Member State by the nationals of all Member States who have obtained, in another Member State, a diploma listed under Article 3.
- 20 Such an interpretation accords, moreover, with the requirements flowing from the free movement of persons, the right of establishment and the freedom to provide services guaranteed by [Article 3 TEU], [Articles 45, 49 and 56 TFEU]. Those freedoms, which are fundamental to the system set up by the [Union], would not be fully realized if Member States were able to deny the benefit of provisions of [Union] law to those of their nationals who have availed themselves of the freedom of movement and the right of establishment and who have attained, by those means, the professional qualifications mentioned in the directive in a Member State other than the State whose nationality they hold.
- 21 The second problem envisaged by the question asked is whether a Member State may make the practice of general medicine, by the holder of a diploma awarded in another Member State and recognized by virtue of the provisions of Directive 75/362/EEC, subject to the completion of a period of additional training, a requirement which that Member State also imposes on holders of diplomas of medicine awarded within its own territory.
- 22 The Registration Committee, the defendant in the main proceedings, argued that Directive 75/362/EEC does not contain any rules concerning the recognition of the professional training for general practice undergone subsequent to the university examination in medicine. Recent thinking had shown that general medicine was a specific discipline akin to the specialized disciplines in regard to which Article 8 of the directive conceded to Member States the right to require, even of holders of diplomas awarded in other Member States, an additional period of training. Moreover, the right of establishment of doctors must not be allowed to undermine the efforts of Member States to establish the best possible system of health care.
- 23 That line of reasoning, however, runs counter to the general structure of Directive 75/362/EEC, which is based on the distinction between the recognition of diplomas of medicine (Articles 2 and 3) and recognition of diplomas of specialized medicine

(Articles 4 to 8). Article 2 of the directive requires Member States to recognize as equivalent the diplomas listed in Article 3, as far as the right to take up and pursue the self-employed activities of a doctor is concerned. It is only in so far as the training of specialists is concerned that Articles 4 to 8 of the directive permit the Member State in which the doctor wishes to practise to lay down additional requirements. Such an interpretation is, moreover, reinforced by the preamble to the directive, which states that "the aim of this directive is the recognition of diplomas ... whereby activities in the field of medicine can be taken up and pursued, and the recognition of diplomas . . . in respect of specialists".

24 It is not disputed -and is in any case clear from the wording of Articles 5 and 7 of the directive - that general practice, as understood by the Netherlands legislation, is not recognized as a branch of specialized medicine by the directive. Therefore, in a situation such as that existing in the Netherlands, where the practice of medicine is made subject to the recognition of the doctor as a general practitioner, the right to practise of a holder of a diploma awarded in another Member State flows directly from recognition of the diploma under Article 2 of the directive and does not depend upon any additional qualification obtained in the State in which the doctor wishes to practise.

25 It should be noted, moreover, that doctors who are nationals of another Member State and who have obtained a diploma recognized by virtue of Directive 75/362/EEC in a Member State other than the Netherlands are admitted to the profession of general practitioner in the Netherlands without having undergone an additional period of training. It is clear from the considerations set forth above that entry to the profession of general practitioner by a doctor of Netherlands nationality who has obtained a similar diploma may not be made subject to other requirements.

26 Finally, it should be observed that Article 21 of Directive 75/362/EEC expressly permits Member States to require completion of a preparatory training period during a transitional period of five years. Thus at the end of that period the Member State is no longer entitled to impose such a requirement or to require any other additional training of doctors who establish themselves within the territory of that Member State as general practitioners and who are holders of diplomas obtained in another Member State and recognized by virtue of the directive.

27 Therefore the reply to the question asked by the Appeals Committee must be that Directive 75/362/EEC is to be interpreted as meaning that a national of a Member State who has obtained a diploma listed under Article 3 of the directive in another Member State and who, by that token, may practise general medicine in that other Member State is entitled to establish himself as a general practitioner in the Member State of which he is a national, even if that Member State makes entry to that profession by holders of diplomas of medicine obtained within its own borders subject to additional training requirements.

## Costs

28 The costs incurred by the Netherlands Government and by the Commission of the European [Union], which have submitted observations to the Court, are not recoverable. As these proceedings are in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before a national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Commissie van Beroep Huisarts geneeskunde by order of 21 October 1980, hereby rules:

**Council Directive 75/362/EEC is to be interpreted as meaning that a national of a Member State who has obtained a diploma listed under Article 3 of the directive in another Member State and who, by that token, may practise general medicine in that other Member State is entitled to establish himself as a general practitioner in the Member State of which he is a national, even if that Member State makes entry to that profession by holders of diplomas of medicine obtained within its own borders subject to additional training requirements.**

Mertens de Wilmars    Pescatore    Mackenzie Stuart    Koopmans    O'Keeffe  
Touffait    Due    Everling    Chloros

Delivered in open court in Luxembourg on 6 October 1981.

A. Van Houtte  
Registrar

J. Mertens de Wilmars  
President