

**Judgment of the Court (Sixth Chamber) of 18 January 2001**

**Commission of the European Communities v Italian Republic**

**Failure by a Member State to fulfil its obligations - Freedom of movement for workers - Freedom of establishment - Dentists - Residence conditions**

**Case C-162/99**

*European Court reports 2001 Page I-00541*

In Case C-162/99,

Commission of the European Communities, represented by F.P. Ruggeri Laderchi and B. Mongin, acting as Agents, with an address for service in Luxembourg,  
applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato, with an address for service in Luxembourg,  
defendant,

APPLICATION for a declaration that:

by allowing Legislative Decree No 233 of the Provisional Head of State of 13 September 1946, despite amendment by Article 9 of Law No 362 of 8 November 1991, to remain in force in such a way as to leave dentists practising in Italy still subject to a de facto residence requirement,

by maintaining in force Article 15 in Title IV of Law No 409 of 24 July 1985, which refers to Article 1 of Law No 1398 of 14 December 1964, having the effect that only dentists of Italian nationality may remain registered as practitioners upon transferring their residence to another Member State,

the Italian Republic has failed to fulfil its obligations under Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and F. Macken, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 November 2000,

gives the following

Judgment

**Grounds**

**1** By application lodged at the Court Registry on 30 April 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that:

by allowing Legislative Decree No 233 of the Provisional Head of State of 13 September 1946, despite amendment by Article 9 of Law No 362 of 8 November 1991, to remain in force in such a way as to leave dentists practising in Italy still subject to a de facto residence requirement,

by maintaining in force Article 15 in Title IV of Law No 409 of 24 July 1985, which refers to Article 1 of Law No 1398 of 14 December 1964, having the effect that only dentists of Italian nationality may remain registered as practitioners upon transferring their residence to another Member State,

the Italian Republic has failed to fulfil its obligations under Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC).

### **The national legal framework**

**2** Legislative Decree No 233 of the Provisional Head of State of 13 September 1946 on the reconstitution of the associations of the health-care professions and the regulation of the practice of those professions (hereinafter the Legislative Decree of 1946) provides, in Article 9(e), that, in order to be registered, a practitioner must have his residence in the district of the professional body or association.

**3** Article 11(b) of the Legislative Decree of 1946 provides that a practitioner is to be removed from the register in the event of the transfer abroad of the residence of the person registered.

**4** Article 1 of Law No 1398 of 14 December 1964 amending and supplementing Law No 736 of 10 July 1960 as regards the registration of Italian members of the health-care professions residing abroad (hereinafter the Law of 1964) added the following paragraph to Article 11 of the Legislative Decree of 1946:

In the case referred to at (b), a member of a health-care profession who practises abroad or who works abroad for hospitals, public authorities or private individuals may, at his request, retain the entry in the register of the association or professional body from which his name has been removed.

**5** The sixth paragraph of Article 9 of Law No 409 of 24 July 1985 on the profession of dental surgeon and on the provisions concerning the right of establishment and the freedom to provide services of dentists who are nationals of Member States of the European Communities (hereinafter the Law of 1985) provides that the competent professional body is to conduct the registration procedure in accordance with the laws in force.

**6** Article 15 of the Law of 1985, which forms part of Title IV thereof, entitled Practice in other Member States of the European Communities by dental surgeons of Italian nationality, provides:

Dental surgeons who are Italian nationals and who transfer their residence to one of the Member States of the European Communities may, upon request, remain registered with the Italian professional association to which they belong.

**7** Article 9(e) of the Legislative Decree of 1946 was amended by Article 9, headed Criteria for professional registration, of Law No 362 of 8 November 1991 on the rules for the re-organisation of the pharmaceutical sector (hereinafter the Law of 1991). That article now provides that, in order to be registered, the person concerned must have his residence or practise his profession in the district of the professional body or association.

**8** The documents before the Court show that the Rules of the Association of Surgeons and Dental Surgeons of the Province of Imperia (hereinafter the Rules of the Province of Imperia Association), adopted in 1991, contain, in Articles 9(e) and 11(b), provisions identical to those of Articles 9(e) and 11(b) of the Legislative Decree of 1946, in their original version.

### **The pre-litigation procedure**

**9** Having been made aware of the existence of the aforementioned provisions of the Rules of the Province of Imperia Association when a written question was submitted to it on 21 June 1995 by a Member of the European Parliament (OJ 1995 C 277, p. 20), and being of the opinion that the provisions of the Legislative Decree of 1946, to which those of the rules in question were identical, were contrary to Articles 48 and 52 of the Treaty, the Commission, by letter of 17 March 1997, gave the Italian Government formal notice to submit its observations within two months.

**10** By letter of 26 August 1997, the Italian authorities replied that, following amendments made by the Laws of 1964 and 1991 to Articles 9(e) and 11(b) of the Legislative Decree of 1946, those provisions were now consistent with Articles 48 and 52 of the Treaty.

**11** On 11 June 1998 the Commission sent a reasoned opinion to the Italian Republic, in which it reiterated its criticisms of the national legislation and requested that Member State to adopt, within a period of two months from the notification of that opinion, the measures necessary to comply with the obligations arising from Articles 48 and 52 of the Treaty.

**12** The Italian authorities replied to the reasoned opinion by letter of 23 December 1998, maintaining, with regard to the residence requirement, that, although the Law of 1991 referred to the pharmaceutical sector, the persons covered by it included dentists. With regard to removal from the register of dentists in the event of their residence being transferred abroad, the authorities pleaded possible amendment of Article 11(b) of the Legislative Decree of 1946 and acknowledged that Article 15 of the Law of 1985, by restricting the possibility of maintaining such registration to Italian nationals, was not consistent with Community law. They announced that the competent minister would take steps to prevent any discriminatory application of that provision and that legislative measures would be adopted to amend it.

**13** Deeming that reply unsatisfactory, the Commission brought the present action, which comprises two complaints which must be examined in turn.

**14** The first complaint concerns the residence requirement to which registration with the dental association is subject pursuant to Article 9(e) of the Legislative Decree of 1946, as amended by the Law of 1991.

**15** The second complaint relates to Article 15 of the Law of 1985, in so far as it restricts the possibility of avoiding removal from the register in question, in the event of residence being transferred abroad, to dentists of Italian nationality.

### **The residence requirement**

**16** The Commission submits that the residence requirement imposed by the Italian authorities constitutes a restriction on freedom of establishment and on freedom of movement for workers, inasmuch as it prevents dentists established in another Member State from opening and running a second surgery in Italian territory, or from practising their profession there in a salaried capacity, without transferring their residence to Italy. The Commission adds that such a requirement is not justified either by the need to ensure compliance with the rules of professional conduct or by the need to ensure the continuity of medical treatment and the proximity of doctor and patient.

**17** The Commission points out that the amendment of the Legislative Decree of 1946 by the Law of 1991, which is a sectoral law relating only to pharmacists, has created a confused and uncertain legal situation which is incompatible with the proper application of Articles 48 and 52 of the Treaty, and has therefore not put an end to the breach of obligations. It sees as proof of that the fact, first, that the Rules of the Province of Imperia Association continue, notwithstanding that legislative amendment, to impose a residence requirement similar to that laid down in the Legislative Decree of 1946, without taking account of the Law of 1991. Second, it points out that the National Federation of Associations of Surgeons and Dental Surgeons (hereinafter the National Federation), in a letter sent on 16 January 1998 to that provincial association, confirmed, in the absence of a reply from the Ministry of Health and the Ministry of Foreign Affairs to the questions raised in that connection, the necessity, under [the] Constitutional Law, for a Community national intending to practise [in Italy] to reside within the district of the provincial association of registration.

**18** The Italian Republic contends that Article 9(e) of the Legislative Decree of 1946, in the version as amended by the Law of 1991, is entirely compatible with Articles 48 and 52 of the Treaty. By now providing that, in order to be registered, it is sufficient for the person concerned to practise his profession within the district of the association concerned, that provision allows any interested party to set up or maintain more than one centre of activity on Community territory.

**19** The Italian Republic adds that, under the rules of interpretation in force within the Italian legal system, the amendment made to Article 9(e) of the Legislative Decree of 1946 by the Law of 1991 applies to all the health-care professions, including the dental profession. In that context, it argues, the fact that a few local associations or the National Federation have misinterpreted the legislation in force or contravened it is of little importance.

**20** In order to rule on the merits of this complaint, it must be pointed out, first, that it is not disputed that where a Member State makes registration with the dental association, and therefore the practice by dentists of their profession, subject to the requirement that the persons concerned reside in the district of the professional association with which they seek registration, that constitutes a restriction on freedom of establishment and freedom of movement for workers in that such a requirement prevents dentists established or resident in another Member State from setting up a second dental surgery in the first State or practising as employees there (see, to that effect, in particular, Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 20 to 22 and 28).

**21** Moreover, in this case no considerations in the public interest which could justify such a restriction have been put forward by the Italian Republic.

**22** Second, it must be borne in mind that the need to ensure that Community law is fully applied requires Member States not only to bring their legislation into conformity with Community law but also to do so by adopting rules of law capable of creating a situation which is sufficiently precise, clear and transparent to allow individuals to know the full extent of their rights and rely on them before the national courts (see, to that effect, with regard to directives, Case C-360/87 *Commission v Italy* [1991] ECR I-791, paragraph 12, and Case C-220/94 *Commission v Luxembourg* [1995] ECR I-1589, paragraph 10). It is of little consequence in this connection that the provisions of Community law, compliance with which is to be ensured, are directly applicable and that individuals are therefore entitled to rely on them, in judicial proceedings, as against a defaulting Member State (see, to that effect, in particular, Case C-208/90 *Emmott v Minister for Social Welfare and the Attorney General* [1991] ECR I-4269, paragraphs 20 and 21).

**23** In addition, it follows from the case-law of the Court that the requirement of precision, clarity and transparency which national legislation must satisfy is also applicable where general principles of constitutional law, such as the general principle of equal treatment, are involved, and is of particular importance where the provisions of Community law in question are intended to accord rights to nationals of other Member States, inasmuch as those nationals are not normally aware of such principles (Case 29/84 *Commission v Germany* [1985] ECR 1661, paragraph 23).

**24** That must apply a fortiori where, as in this case, it is only by referring to rules of interpretation which are specific to national law that nationals of other Member States can determine the exact scope of a legislative amendment and know the full extent of their rights.

**25** Moreover, where, in infringement proceedings, the parties are at issue on the exact scope of provisions of national legislation, such as, in this case, the provision resulting from the amendment of Article 9(e) of the Legislative Decree of 1946 by Article 9 of the Law of 1991, particular importance attaches to the way in which the national provisions concerned have been applied in practice (see, to that effect, Case 235/84 *Commission v Italy* [1986] ECR 2291, paragraph 14).

**26** The Italian Republic does not deny that several local associations of surgeons and dental surgeons, as well as the National Federation, have interpreted Article 9(e) of the Legislative Decree of 1946, despite its having been amended by the Law of 1991, as meaning that they were entitled to continue making registration with an association conditional on the person concerned having his residence in the district of that association.

**27** It is also apparent from the National Federation's letter of 16 January 1998 that the latter was encouraged in its alleged misinterpretation by the fact that the competent Italian authority did not provide a reply giving the Federation any guidance on the question which the latter had raised with it concerning the application of the residence condition to Community nationals wishing to practise as dentists in Italy.

**28** It inevitably follows from the foregoing considerations that the first complaint in the Commission's application must be upheld.

### **Removal from the register of the professional association in the event of transfer of residence to another State**

**29** In support of its second complaint, the Commission submits that removal from the register in the event of transfer of residence to another State also constitutes a restriction on freedom of establishment and freedom of movement for workers, inasmuch as its effect is to prevent dentists established and resident in another Member State from practising in Italy either by opening a second dental surgery there or by working there in a salaried capacity. Furthermore, that measure is discriminatory since it does not preclude dentists established and resident in Italy from opening a second surgery in another Member State, provided that they continue to reside in the district of the association to which they belong in Italy.

**30** The Italian Republic maintains that Article 15 of the Law of 1985 was adopted in order to regulate the practice by Italian nationals of the profession of dentist in other Member States. That provision cannot therefore be interpreted in such a way as to permit any application contrary to the right of establishment of Article 11(b) of the Legislative Decree of 1946, as amended by the Law of 1964, which allows any person practising a health-care profession in Italy to retain, at his request, his registration with the association concerned in the event of his residence being transferred to another Member State. The Italian Republic adds that, in order to dispel any doubt on this matter, the proposed legislation already announced in the reply to the reasoned opinion is intended to make it clear that that right applies to dentists of all Member States.

**31** It must be stated that Article 15 of the Law of 1985, which postdates the Legislative Decree of 1946, as amended by the Law of 1964, and which applies exclusively to dentists, restricts to dentists of Italian nationality the right to request the maintenance of their registration with the association concerned in the event of their residence being transferred to another Member State of the European Communities.

**32** As such, that provision therefore involves discrimination based on nationality, contrary to Articles 48 and 52 of the Treaty.

**33** Quite apart from the relationship between the Law of 1985 and the Legislative Decree of 1946, as amended by the Law of 1964, it should be recalled that, according to the established case-law of the Court, the maintenance unchanged, in the legislation of a Member State, of a provision which is incompatible with a provision of the Treaty gives rise to an ambiguous state of affairs by maintaining, as regards those subject to the law who are concerned, a state of uncertainty as to the possibilities for them of relying on Community law and that such maintenance therefore constitutes a failure on the part of that State to fulfil its obligations under the Treaty (see, in particular, Case 168/85 Commission v Italy [1986] ECR 2945, paragraph 11, Case C-58/90 Commission v Italy [1991] ECR I-4193, paragraphs 12 and 13, and Case C-185/96 Commission v Greece [1998] ECR I-6601, paragraph 32).

**34** It follows that, by maintaining in force Article 15 of the Law of 1985 which, in the event of transfer of residence to another Member State, restricts the possibility of retaining registration with the association to dentists of Italian nationality, the Italian Republic has failed to fulfil its obligations under Articles 48 and 52 of the Treaty.

**35** Consequently, the second complaint in the Commission's application is also well founded.

**36** In view of all the foregoing considerations, it must be held that:

by allowing the Legislative Decree of 1946, despite amendment by Article 9 of the Law of 1991, to remain in force in such a way as to leave dentists practising in Italy still subject to a de facto residence requirement,

by maintaining in force Article 15 of the Law of 1985, which refers to Article 1 of the Law of 1964, having the effect that only dentists of Italian nationality may remain registered with their professional association upon transferring their residence to another Member State,

the Italian Republic has failed to fulfil its obligations under Articles 48 and 52 of the Treaty.

## **Decision on costs**

### **Costs**

**37** Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Italian Republic has been unsuccessful and the Commission has applied for costs, the Italian Republic must be ordered to pay the costs.

## Operative part

On those grounds,  
THE COURT (Sixth Chamber)  
hereby:

1. Declares that:

by allowing Legislative Decree No 233 of the Provisional Head of State of 13 September 1946 on the reconstitution of the associations of the health-care professions and the regulation of the practice of those professions, despite amendment by Article 9 of Law No 362 of 8 November 1991 on the rules for the re-organisation of the pharmaceutical sector, to remain in force in such a way as to leave dentists practising in Italy still subject to a de facto residence requirement,

by maintaining in force Article 15 of Law No 409 of 24 July 1985 on the profession of dental surgeon and on the provisions concerning the right of establishment and the freedom to provide services of dentists who are nationals of Member States of the European Communities, which refers to Article 1 of Law No 1398 of 14 December 1964 amending and supplementing Law No 736 of 10 July 1960 as regards the registration of Italian members of the health-care professions residing abroad, having the effect that only dentists of Italian nationality may remain registered with their professional association upon transferring their residence to another Member State,

the Italian Republic has failed to fulfil its obligations under Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC);

2. Orders the Italian Republic to pay the costs.