

Judgment of the Court, C. Broekmeulen/Huisarts Registratie Commissie, Case 246-80 (6 October 1980)

Caption: According to the Court of Justice, in its judgment of 6 October 1981, in Case 246/80, C. Broekmeulen v Huisarts Registratie Commissie, in the absence, in practice, of any right of appeal to the ordinary courts, an Appeals Committee set up by a professional body, 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 Community law, be considered as a court or tribunal of a Member State within the meaning of Article 177 of the EEC Treaty (now Article 234 of the EC Treaty).

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Judgment of the Court 6 October 1981 (1)
C. Broekmeulen v Huisarts Registratie Commissie
(reference for a preliminary ruling from the Commissie van Beroep
Huisartsgeneeskunde, The Hague)

(Right of establishment - Doctors)

Case 246/80

Summary

1. Reference for a preliminary ruling - Jurisdiction of the Court - National court or tribunal within the meaning of Article 177 of the EEC Treaty - Concept - Appeals committee set up by a professional body (EEC Treaty, Art. 177)

2. Free movement of persons - Freedom of establishment and freedom to provide services - Provisions of the Treaty - Persons to whom they apply - Scope (EEC Treaty, Arts 3 (c), 48, 52 and 59)

3. Free movement of persons - Freedom of establishment and freedom to provide services - Doctors - National of a Member State holding a diploma issued in another Member State and referred to in Article 3 of Directive 75/362/EEC - Right of establishment as a general practitioner in the Member State of which he is a national - Further training requirements - Not permissible (Council Directive 75/362/EEC, Arts 2 and 3)

1. If, under the legal system of a Member State, the task of implementing provisions adopted by the institutions of the Community 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 Community law, it is imperative, in order to ensure the proper functioning of Community law, that the Court should have an opportunity of ruling on issues of interpretation and validity arising out of such proceedings.

It follows that 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 Community law, be considered as a court or tribunal of a Member State within the meaning of Article 177 of the Treaty.

2. The free movement of persons, the right of establishment and the freedom to provide services guaranteed by Articles 3 (c), 48, 52 and 59 of the Treaty, freedoms which are fundamental to the system set up by the Community, would not be fully realized if Member States were able to deny the benefit of provisions of Community 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 a directive on the mutual recognition of diplomas in a Member State other than the State whose nationality they hold.

3. 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.

In Case 246/80

REFERENCE to the Court under Article 177 of the EEC Treaty 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

Facts and Issues

The order for reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I - Facts and written procedure

1. In the Netherlands special arrangements have been made for granting recognition as a "huisarts" (general practitioner), in other words a doctor qualified to practise general medicine and to give primary medical assistance. The rules governing those arrangements are contained in the statutes and the internal regulations of the Koninklijke Nederlandse Maatschappij tot Bevordering der Geneeskunst (Royal Netherlands Society for the Promotion of Medicine, hereinafter referred to as "the Society"). A summary of those rules is given below.

The requirements to be met in order to be recognized as a general practitioner are laid down by the College voor Huisartsgeneeskunde (Council for General Medicine), which is an organ of the Society. The decisions of that Council are subject to review by the Netherlands Government.

The Huisarts Registratie Commissie (General Practitioners Registration Committee, hereinafter referred to as "the Registration Committee") is charged with the enforcement and application of the provisions laying down the requirements as to recognition. Those provisions govern *inter alia* enrolment on the register of recognized general practitioners, a doctor being recognized as a general practitioner only when he has been registered. Applications for registration are first examined by an executive committee comprising members of the Registration Committee. The application may then be examined by the Registration Committee itself, if, for instance, the executive committee was not unanimous in judging the application to be validly made.

If the Registration Committee declines to enrol the applicant on the register the applicant may lodge an appeal with the Commissie van Beroep Huisartsgeneeskunde (Appeals Committee for General Medicine, hereinafter referred to as "the Appeals Committee").

Both the Registration Committee and the Appeals Committee were set up under Article 1102 (2) of the internal rules of the Society.

2. The applicant in the main proceedings, Dr Broekmeulen, is a Netherlands national. On 30 June 1979, as a result of the examinations which he took at the Faculty of Medicine in the Catholic University of Louvain, Belgium, he obtained the diploma of doctor of medicine, surgery and obstetrics referred to in Article 3 (b) of Council Directive 75/362/EEC of 16 June 1975.

Pursuant to the provisions of Article 2 of the Wet Regelende de Uitoefening der Geneeskunst [Law

regulating the practice of medicine] the Secretary of State for Health and the Environment granted him authorization to practise medicine in the Netherlands by a decision dated 18 September 1979. He took his doctor's oath on 19 October 1979.

By a letter dated 14 November 1979 Dr Broekmeulen applied to be enrolled on the register of recognized general practitioners. By a letter dated 18 March 1980 from the secretary of the Registration Committee he was informed that, pursuant to Order No 1-1977 of the Council for General Medicine, enrolment on the said register was not possible so long as he did not meet the requirements laid down by Order No 1-1974 of the Council for General Medicine regulating the training of general practitioners. Therefore, like Netherlands doctors who hold an "universitair getuigschrift van arts" (university certificate of doctor) issued by a Netherlands university as referred to in Article 3 (h) of Council Directive 75/362/EEC, Dr Broekmeulen would have to undergo a year's training as a general practitioner before he could be enrolled on the register of recognized general practitioners.

He appealed against that decision to the Appeals Committee.

3. The preamble to Order No 1-1977 of the Council for General Medicine (hereinafter referred to as Order No 1-1977) and Article 1 thereof are worded as follows:

"The Council for General Medicine ...

Having regard to the entry into force on 20 December 1976 of Directives 75/362/EEC and 75/363/EEC of the European Community concerning the right of establishment of doctors within the Community;

Taking note of the desirability, on the one hand, of general rules on the recognition and registration of doctors not having Netherlands nationality and qualifications and, on the other hand, of rules for nationals of Member States of the European Community who are in possession of one of the medical diplomas recognized by virtue of the directives of the European Community; whereas, pending agreement on the application of the said directives in relation to general medicine, it seems proper to limit the period of validity of the following order;

Having heard the views of the General Practitioners Registration Committee;

Having regard to Articles 1107 and 1109 of the internal rules of the Royal Netherlands Society for the Promotion of Medicine;

has decided

that doctors with foreign diplomas who have been authorized to practise medicine in the Netherlands shall be enrolled on the register of recognized general practitioners in accordance with the following provisions:

Article 1

Nationals of the other Member States of the European Community who are in possession of one of the diplomas in medicine awarded in the other Member States and recognized by virtue of EEC Directives 75/362/EEC and 75/363/EEC and who submit to the General Practitioners Registration Committee proper evidence that they have been authorized to practise medicine in the Netherlands shall at their request be enrolled on the register of recognized general practitioners."

Article 2 of Council Directive 75/362/EEC of 16 June 1975 provides:

"Each Member State shall recognize the diplomas, certificates and other evidence or formal qualifications awarded to nationals of Member States by the other Member States in accordance with Article 1 of Directive 75/363/EEC and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the self-employed activities of a doctor is concerned, the same effect in its territory as those which

the Member State itself awards."

Amongst the diplomas listed in Article 3, as regards Belgium, the "diploma of doctor of medicine, surgery and obstetrics" appears in subparagraph (b) thereof.

4. Dr Broekmeulen argued before the Appeals Committee that, having regard to its preamble, Order No 1-1977 applies to "nationals of Member States of the European Community who are in possession of one of the doctor's diplomas recognized by virtue of the directives of the European Community" and that he fell within that class of persons. In the alternative, he argued that the provisions of Order No 1-1977 could not be relied on against him because his right to be enrolled on the register of recognized general practitioners without having undergone the year's training as a general practitioner in the Netherlands, flowed directly from Directives 75/362/EEC and 75/363/EEC.

By order of 21 October 1980, registered at the Court on 4 November 1980, the Appeals Committee stayed the proceedings pursuant to Article 177 of the EEC Treaty and referred 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 kept by the Royal Netherlands Society for the Promotion of Medicine without first having undergone training in the Netherlands as a general practitioner? For the purpose of this question it is assumed 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."

It is clear from the order for reference that the Appeals Committee thought that Article 1 of Order No 1-1977 must be interpreted as meaning that a doctor of Netherlands nationality holding a Belgian diploma of medicine may be enrolled on the register of recognized general practitioners only if he has undergone a period of training of one year in general medicine in the Netherlands.

The Committee also noted that:

(a) Article 26 of the statutes of the Society provides that those provisions of the internal rules of the Society which relate to the recognition and registration of general practitioners may be amended only in consultation with the ministers whose departments are responsible for higher education and public health respectively;

(b) By virtue of Article 1109 of the internal rules, the orders of the Council for General Medicine which lay down the requirements concerning the training of general practitioners, training practices and institutions for general practitioners, are subject to supervision by the aforementioned ministers, which is exercised in the form of a right of veto;

(c) The Royal Decree of 4 January 1966 (Staatsblad 3), adopted pursuant to the Sickness Insurance Law and amended by the Royal Decree of 15 August 1973 (Staatsblad 428), laying down the "Verstrekkingenbesluit" [Decree concerning benefits], defines "general practitioner" as a doctor enrolled on the register of recognized general practitioners kept by the Society;

(d) By virtue of that provision doctors who are not enrolled on that register are not able to have their practices recognized by sickness insurance funds and it therefore becomes in fact impossible to extend treatment to a large number of potential patients; private insurers define "general practitioner" in exactly the same way as the decree concerning benefits;

(e) The effect of that decree is that the provisions of the statutes and internal rules of the Society apply compulsorily to all doctors, including those who are not members of the Society.

The Appeals Committee also made the following findings of fact:

(a) On the basis of his Belgian diploma, Dr Broekmeulen was granted authorization to practise medicine in the Netherlands in accordance with Article 2 of the *Wet Regellende de Uitoefening der Geneeskunst* [Law regulating the practice of medicine]; in that respect there is no difference between him and a Netherlands national holding a diploma of medicine awarded by a Netherlands university.

(b) The Belgian diploma of medicine entitles the holder to practise general medicine in Belgium.

(c) On several occasions Belgian nationals holding a Belgian medical diploma have, upon making application, been enrolled on the register of general practitioners without further formality.

As regards the applicability of Article 177 of the EEC Treaty, the Appeals Committee considers that *prima facie* it should be regarded as a "court or tribunal" within the meaning of Article 177 of the EEC Treaty. In this regard the Appeals Committee points out that the provisions of the internal rules of the Society concerning the recognition and registration of general practitioners, including the rules as to the composition, functions and procedure of the Appeals Committee (Articles 1102 and 1129 to 1132), are subject to ministerial supervision.

The Minister for Health and the Minister for Higher Education appoint the chairman and two members of the Appeals Committee (Articles 1129 and 1031 (1) (d)). For the office of chairman a high-ranking judge is preferred.

The function of the Appeals Committee is defined as follows: "The Appeals Committee for General Medicine shall hear cases brought before it" (Article 1132(1)).

The cases in which an *appeal* lies to the Committee are defined by Articles 1118 (5), 1120 (7), 1122 (4) and 1125 (7) of the internal rules.

The rules governing the hearing of appeals by the Committee are of general application. As a result of the decree concerning benefits the binding effect of decisions of the Appeals Committee extends, according to the Committee, beyond the body comprising the members of the Society.

5. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the following: Dr Broekmeulen, the applicant in the main proceedings, represented by G. van der Wal, Advocate, Tilburg; the Registration Committee, the defendant in the main proceedings, represented by B. H. ter Kuile of the Hague Bar; the Netherlands Government; and the Commission of the European Communities, represented by H. J. Bronkhorst, a member of its Legal Department, acting as Agent, and assisted by Christine Berardis-Kayser, a member of its Legal Department.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, the Court invited the Netherlands Government to reply, in writing, to certain questions concerning the legal status of the Appeals Committee.

II - Written observations submitted to the Court

(a) Applicability of Article 177 of the EEC Treaty

According to Dr Broekmeulen, the applicant in the main proceedings, the register of general practitioners is maintained by an organization governed by private law, namely the Society. The internal rules of that organization lay down the procedure for registration subject to a right of appeal and, in the context of *that* procedure, the Appeals Committee is the highest decision-making body.

He considers, however, that it would be open to him to appeal against the final decision of the Appeals Committee to the ordinary courts, namely the Arrondissementsrechtbank [District Court], to test the legality of the decision. Indeed, as regards the Society, the decision is regarded as final and thus it could, if necessary, be challenged in ordinary civil proceedings. Nevertheless, the Appeals Committee may be regarded as a national "court or tribunal" either under the third paragraph of Article 177 of the EEC Treaty or under the second paragraph thereof.

The *Netherlands Government* points out that the Appeals Committee is made up of three members appointed by the medical faculties and three members appointed by the Board of the Society. A further two members are appointed by the ministers responsible respectively for higher education and for health and the chairman of the Committee is appointed by the same ministers. At the same time a number of surrogate members are appointed. Members and surrogate members hold office for a period of five years. Their appointment may be renewed (Articles 1129 and 1130 of the internal rules of the Society). Those provisions were adopted in agreement with the responsible ministers and may only be amended with the approval of those ministers.

The decree concerning benefits requires that a doctor must be enrolled on the appropriate register in order to be able to practise general medicine in the Netherlands. The conditions subject to which registration may be effected are governed by the internal rules of the Society and by the orders issued by the Council for General Medicine. Those orders are also subject to government supervision. Therefore the Appeals Committee may be said to apply rules of law in deciding cases brought before it.

Article 1132 of the internal rules governs the procedure to be followed before the Appeals Committee. The Appeal Committee may invite the persons concerned to appear before it. Those persons and the Registration Committee must at their request be heard by the Appeals Committee. If the appeal is against a decision of the Registration Committee declining to enrol the applicant on the register, the applicant may be represented by a lawyer.

The *Netherlands Government* adds that the fact that the Appeals Committee is placed in a position where it has to interpret Community law is in itself ample reason for applying Article 177 of the EEC Treaty. In addition the *Netherlands Government* refers to the judgment of the Court of 30 June 1966 in Case 61/65 *Vaassen (nee Goebbels)* ([1966] ECR 261 et seq.)

The *Commission* of the European Communities refers in the first instance to the judgment of the Court of 30 June 1966 in Case 61/65 (*be. cit.*).

With regard to the supervisory control exercised by the *Netherlands Government* over the statutes and internal rules of the Society, the *Commission* refers to the grounds stated for making the order for reference.

The *Commission* is of the opinion that the correct view is that the Appeals Committee is a permanent body whose task is to decide cases which are defined in general terms in the internal rules of the Society. Moreover, the Appeals Committee is subject to rules similar to those which govern adversary proceedings.

Although in the Netherlands practising doctors are not compelled to be members of the Society the requirement to register as a general practitioner is imposed on members and non-members alike and registration involves certain legal consequences under public law. In this regard, the *Commission* makes reference to the decree concerning benefits.

Furthermore, the Commission is of the opinion that, in the light of the procedural rules generally applicable before the Appeals Committee, any other court would hold that it did not have jurisdiction to hear the case, on the ground that an appeal brought before the Appeals Committee amounts in fact to proceedings before an authority which is sufficiently independent from the body issuing the decision which is challenged in that appeal.

The substance of the case

Dr Broekmeulen points out that Articles 52, 53, 59 and 62 of the EEC Treaty have direct effect. The directives required by those Treaty provisions are only intended to give practical effect to the rights conferred thereby. Dr Broekmeulen acknowledges that the realization of the right of establishment of doctors is not without certain specific difficulties which, as regards the recognition of diplomas, are expressly dealt with in Article 57 (3) of the Treaty. However, he takes the view that those difficulties were resolved by the entry into force of Directives 75/362/EEC and 75/363/EEC abolishing restrictions and harmonizing the qualifications required in the field of medicine.

The two directives have direct effect horizontally and vertically, which means they confer upon individuals rights which national courts are bound to protect.

Dr Broekmeulen points out that the registration of general practitioners in the Netherlands is entrusted to a private association. The application of the provision in question requires no further implementing measures on the part of the Council for General Medicine or the public authorities, since "effect is given to the directives by Articles 2 and 3 of the Law regulating the practice of medicine, which grant authorization to practise medicine in the Netherlands to those who, wishing to establish themselves in that country as doctors, apply for such authorization and provide evidence that they are holders of a diploma of doctor of medicine listed in Article 3 of the first Directive [75/362/EEC] and that they are nationals of one of the Member States of the EEC" (reply by Mrs Veder-Smit, Secretary of State for Health and the Environment, Second Chamber of the Netherlands States General, 1979-1980, Annex No 1504, p. 2921).

Dr Broekmeulen maintains that the two directives apply to general practitioners since the present case involves the training, qualifications and activities of a doctor practising general medicine. That argument is supported by the history of Article 21 of Directive 75/362/EEC, which provides that Member States which require their own nationals to complete a preparatory training period in order to become eligible for appointment as doctors under a social security scheme may impose the same requirement on nationals of other Member States during a transitional period. That provision is designed solely to meet the situation of general practitioners in the Federal Republic of Germany. At the time when the directives were under discussion, the representatives of the Netherlands Government expressly stated that their government did not require Article 21 to be applied to the Netherlands. It follows that the directives apply in their entirety to general practitioners.

Furthermore, the Netherlands Secretary of State for Health stated the attitude of the Netherlands Government on the question of the implementation of the directives in a letter addressed to the Council for General Medicine informing the Council of its serious reservations about Order No 4-1980. Mrs Veder-Smit, the Secretary of State, wrote in the following terms on that subject:

"In the Government's view, the requirement to undergo training specifically in general medicine must not be allowed to prevent nationals of other Member States of the European Communities who hold one of the qualifications mentioned in the directives from establishing themselves as general practitioners and from receiving recognition under sickness insurance schemes without undergoing any special training. The above-mentioned Order No 4-1980, however, prevents this from being the case. The same applies *mutatis mutandis* to Netherlands nationals who are holders of a diploma of doctor of medicine awarded in another Member State of the EEC." (Medisch Contact, the journal of the Society, No 40, 3 October 1980.)

As a result of that letter, Order No 4-1980 was not given effect.

Dr Broekmeulen considers that he is entitled to be enrolled on the register of recognized general practitioners. According to Order No 1-1977 registration is open to "nationals of the other Member States of the European Community who are in possession of one of the doctor's diplomas awarded in the other Member States and recognized by virtue of EEC Directives 75/362/EEC and 75/363/EEC". However, the judgment of the Court of 7 February 1979 in Case 115/78 (*J. Knoors v Secretary of State for Economic Affairs* [1979] ECR 399) held that those provisions cannot exclude the nationals of the Member State in question.

In the applicant's view, the directives concerned apply to doctors and specialists, including general practitioners. The holder of a diploma of doctor mentioned in the directives ought to be enrolled on the register of recognized general practitioners, by virtue of the recognition accorded by the directives to such diplomas, without the imposition of other conditions by Member States or private professional associations.

According to Dr Broekmeulen, Article 8 of Directive 75/362/EEC does not apply to general practitioners. It is precisely for that reason that the Commission submitted a proposal for a supplementary directive concerning general practitioners.

The *Registration Committee* states that special training for general practitioners was introduced in the Netherlands on 1 May 1973. It was declared to be compulsory for those doctors wishing to practise general medicine. By introducing such a system the Netherlands legislature was following a tendency which was becoming apparent in a number of countries.

Order No 1-1977 of the Council for General Medicine was based on the following considerations. First, the directives in question do not contain any provisions concerning the mutual recognition of the various training schemes for general practitioners undergone after the examination in medicine. Such schemes already existed in certain Member States. Secondly, the freedom to provide services and the right of establishment in medicine within the Community cannot be allowed to prejudice the responsibility of Member States to ensure the best possible system of health care. Thirdly, the application by analogy of Article 8 of Directive 75/362/EEC is therefore justified.

That article provides:

"Nationals of Member States wishing to acquire one of the diplomas, certificates or other evidence of formal qualifications of specialist doctors not referred to in Articles 4 and 6, or which, although referred to in Article 6, are not awarded in the Member State of origin or the Member State from which the foreign national comes, may be required by a host Member State to fulfil the conditions of training laid down in respect of the specialty by its own law, regulation or administrative action."

As regards general practitioners, the Advisory Committee on Medical Training suggested in its opinion of 13 November 1979 that Member States should "recognize general medicine as a special discipline, akin to recognized specialized disciplines, with a view to applying Article 8 of Directive 75/362/EEC". The Commission of the European Communities had regard to that opinion in its draft proposal of 24 January 1980 for a Council directive on general practitioners to supplement Directives 75/362/EEC and 75/363/EEC.

The *Netherlands Government* refers to the judgments of the Court of 7 February 1979 in Case 115/78 *J. Knoors v Secretary of State for Economic Affairs* [1979] ECR 399 and Case 136/78 *Ministere Public v Vincent Auer* [1979] ECR 437.

The classes of persons to whom Directive 75/362/EEC applies are defined in Article 2 thereof. In the light of Case 115/78 *J. Knoors* [1979] ECR 399, the Netherlands Government considers that that definition should be construed broadly in the sense that nationals of all Member States must be able to avail themselves of the liberalizing measures which it lays down, provided that they come objectively within one of the situations provided for by the directive, and no differential treatment on the basis of their place of residence or

nationality is permitted.

As a result, the Netherlands Government is of the opinion that where the holder of a Belgian "diploma of doctor of medicine, surgery and obstetrics" wishes to establish himself in the Netherlands, nothing should turn on whether he is of Belgian or Netherlands nationality.

The Netherlands Government states that it had already become apparent during the 1960s that additional training for general practitioners would be desirable. In spite of the plans to introduce training schemes for general practitioners in the Netherlands, the government, not wishing to delay finalization of the directives, expressly stated in 1973 within the Council that such additional training would not be required of holders of diplomas awarded by other Member States and recognized under Article 3 of Directive 75/362/EEC if they wished to establish themselves in the Netherlands. In this regard, the following statement, contained in the minutes of the Council meeting should be noted: "The Council notes that in a number of Member States a general tendency is emerging which lays stress upon the role of the general practitioner and the importance of his training. The Council requests the Commission to study the problems arising from this trend and to submit appropriate proposals." The Netherlands Government regrets that additional directives on this matter have not yet been adopted.

The *Commission* of the European Communities states that the problem posed by Dr Broekmeulen's case should be seen against the background of an inadequate training capacity in the medical field. The problem arises, first, in the universities, where it has led to the introduction of measures restricting admission to medical faculties. In addition, the facilities for special training of general practitioners are also inadequate in the Netherlands. It appears that the waiting time for admission to such training courses may be as much as two years.

The scope of Article 2 of Directive 75/362/EEC is, in the view of the Commission, clearly not limited to nationals of other Member States but on the contrary includes by implication a Member State's own nationals. That view is in accordance with the statement entered in the minutes of the Council meeting, which is worded as follows:

"The Statement by the Council concerning the definition of the persons covered by the directives"

The Council confirms that it is to be understood that freedom of establishment, particularly for the holders of certificates obtained in the other Member States, must be accorded on the same terms to nationals of other Member States and to nationals of the Member State concerned, as is the case with other directives."

That statement accords with the decisions of the Court in this matter. In the words of Article 57 (1) of the Treaty, the directives in question are intended to facilitate the taking-up and pursuit of activities by persons wishing to enjoy their right of free movement, as guaranteed by the Treaty. In adopting those directives the Council was not seeking merely as an academic exercise to place on an equal footing the diplomas mentioned therein. The Council wished to facilitate the taking-up and pursuit of the profession of doctor in the Member States.

The Commission considers that the ability to provide a service to patients covered by a social security scheme is undoubtedly a precondition for the effective pursuit of the profession of doctor in a Member State. Where a doctor has the right to practise medicine but may not treat patients covered by a sickness insurance scheme, such as is the case in the Netherlands, the effective pursuit of the profession of doctor is little more than illusory.

That is why, according to the Commission, the directives are intended effectively to exempt holders of the diplomas mentioned in Directive 75/362/EEC from the requirement to attend the training course in general medicine operated in the Netherlands. The principle upon which Directive 75/362/EEC is based is that every national of the Community holding one of the diplomas of doctor of medicine listed in Article 3 of the directive is entitled to take up and pursue the profession of doctor. For that reason, the Commission, concludes by proposing that the Court should reply to the question referred to it as follows:

"It follows from Directives 75/362/EEC and 75/363/EEC that a Netherlands national who has obtained in Belgium the 'diploma of doctor in medicine, surgery and obstetrics', is entitled, on settling in the Netherlands, to be enrolled on the register of recognized general practitioners kept by the Royal Netherlands Society for the Promotion of Medicine, without first having to undergo a period of training in general medicine in the Netherlands."

In reply to the questions put to it by the Court, the *Netherlands Government* states that the statutes of the Society and the internal rules derived therefrom have the status of private internal rules of a private organization.

The organs of the Society, including the Appeals Committee, exercise powers deriving from internal rules governed by private law.

The position is not altered by the fact that the provisions in question were drafted in consultation with public authorities.

In point of fact the powers available to the Minister for Higher Education and the Minister for Health are derived solely from the statutes and rules of the Society. Those ministers do not have any independent powers by virtue of public law to give instructions to the Society, of their own motion, concerning the standards to be observed in the admission and registration of specialists, social-security doctors or general practitioners.

Therefore the decisions of the Society may not in law be imputed to the Netherlands State. The public authorities gave their consent to the adoption of the internal procedures of the Society; moreover, those authorities accepted the consequences of giving such consent, for example in Article 1 (d) of the Decree concerning benefits (*Verstrekkingsbesluit*), which recognizes the qualifications laid down by the organs of the Society. Nevertheless, decisions taken by those organs remain in the nature of decisions taken by a legal person governed by private law.

The Netherlands Government points out that under Netherlands law a judicial body, as an organ of the State, must be invested as such by law. It is clear in the light of the foregoing observations that the Appeals Committee does not have that status under the law of the Netherlands.

The Netherlands Government considers that the Court may nevertheless, in the light of its previous decisions, regard the Appeals Committee as a court or tribunal within the meaning of Article 177 of the EEC Treaty. In this respect, it assumes that the Appeals Committee bases its decisions on rules of law. Besides, that assumption is confirmed by the fact that, according to the preliminary question submitted to the Court, the Appeals Committee considers that its decision in the main proceedings depends on the interpretation of Directives 75/362/EEC and 75/363/EEC. In the light of the composition of the Appeals Committee it may also be taken for granted that the Committee will consider itself bound by the preliminary ruling of the Court.

The Netherlands Government is of the view that doctors who are not members of the Society may apply directly to the ordinary courts for individual review of the decisions of the Registration Committee since the internal rules of a private organization may not oust the jurisdiction of the ordinary courts as regards persons who are not members of that organization. Doctors who are members of the Society must first lodge an appeal with the Appeals Committee against any adverse decisions. In point of fact, by becoming members they have subjected themselves to the internal rules of the Society. Nevertheless, a right of appeal then lies to the ordinary courts for the quashing of decisions, which *inter alia* are in conflict with mandatory legislative provisions. The ordinary courts may have regard to all relevant aspects of the dispute in order to assess the legality of the contested decision.

In conclusion, the Netherlands Government is of the opinion that decisions taken by private organizations which restrict or render nugatory individual rights which EEC citizens (including Netherlands nationals)

may derive from Community law must always be capable of being challenged, either directly or on appeal, before the ordinary courts. In this respect decisions taken by the organs of the Society do not constitute an exception.

III - Oral procedure

At the sitting on 19 May 1981 oral argument was presented by the following: G. van der Wal, Advocate, Tilburg, for C. Broekmeulen, the applicant in the main proceedings; L. H. van Lennep, of the Bar of The Hague, for the Registration Committee, the defendant in the main proceedings; A. Bos, acting as Agent, for the Netherlands Government; and H. Bronkhorst, acting as Agent, assisted by C. Berardis-Kayser, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 25 June 1981.

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 177 of the EEC Treaty 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 Huisartsgeneeskunde [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 177

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 177 of the Treaty.

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 177 of the Treaty 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 Community 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 Community 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 177 of the Treaty, 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 Community 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 Community law, it is imperative, in order to ensure the proper functioning of Community 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 Community law, be considered as a court or tribunal of a Member State within the meaning of Article 177 of the Treaty. 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 Articles 3 (c), 48, 52 and 59 of the Treaty. Those freedoms, which are fundamental to the system set up by the Community, would

not be fully realized if Member States were able to deny the benefit of provisions of Community 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 Communities, 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 the 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 Huisartsgeneeskunde 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.

Registrar
A. Van Houtte

President
J. Mertens de Wilmars

(1) Language of the Case: Dutch