OPINION OF ADVOCATE GENERAL JACOBS

delivered on 6 June 2002 [1]

1. This case concerns the extent to which a Member State must accord automatic recognition to a medical qualification awarded to a Community national by the authorities of another Member State on the basis of training undertaken partly outside the Community.

2. It involves a Belgian national who, after six years of medical training in Algeria, was admitted to the seventh year of medical studies in a Belgian university which awarded her a basic medical diploma at the end of that year and a specific diploma in general medical practice after two further years of training. She now wishes to enrol as a medical practitioner in France, but the French authorities do not consider that her qualification has to be recognised under Council Directive 93/16. [2]

Legislative background

3. Under Article 43 EC, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited. Article 47 EC provides for the adoption of Council directives regarding the mutual recognition of qualifications and the harmonisation of national requirements for the taking-up and pursuit of self-employed activities. In the field of medicine, various Council directives have been adopted since 1975.

4. The legislation presently in force is Directive 93/16 ('the Directive'), which is largely a consolidation of three previous measures dealing separately with the mutual recognition of medical qualifications [3] and with minimum training standards required for entitlement to practise medicine. [4] It applies (Title I) to medical practitioners who are nationals of Member

1 — Original language: English.

2 — Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, OJ 1993 L 165, p. 1.

3 — Council Directive 75/362/EEC 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, OJ 1975 L 167, p. 1.

4 — 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, OJ 1975 L 167, p. 14, and Council Directive 86/457/EEC of 15 September 1986 on specific training in general medical practice, OJ 1986 L 267, p. 26.

States. Title II lists the diplomas in medicine and specialised medicine awarded in each Member State which must be automatically recognised in other Member States and contains further provisions dealing with various transitional situations, with the use of academic titles and with the effective exercise of the right of freedom of establishment and freedom to provide services, including conditions which may be imposed before the right to practise is granted. Title III coordinates training requirements in medicine and specialised medicine — a prerequisite for the mutual recognition required by Title II [5] — while Title IV deals with specific training in general medical practice.

5. Thus Article 2 provides: 'Each Member State shall recognise the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by the other Member States in accordance with Article 23 and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a doctor is concerned, the same effect in its territory as those which the Member State itself awards.'

6. The list in Article 3 includes the Belgian 'Wettelijk diploma van doctor in de genees-, heel- en verloskunde'.

7. Under Article 9(5): 'In the case of nationals of the Member States whose diplomas, certificates and other evidence of formal qualifications in medicine... do not conform with the qualifications or designations set out in Article 3... each Member State shall recognise as being sufficient proof the diplomas, certificates and other evidence of formal qualifications awarded by those Member States, accompanied by a certificate issued by the competent authorities or bodies. The certificate shall state that these diplomas, certificates and other evidence of formal qualifications in medicine... were awarded following training in accordance with the provisions of Title III referred to... in Article 2... and are treated by the Member State which awarded them as the qualifications or designations set out... in Article 3...'

8. Article 22 provides: 'In the event of justified doubts, the host Member State may require of the competent authorities of another Member State confirmation of the authenticity of the diplomas, certificates and other evidence of formal qualifications issued in that other Member State and referred to in [*inter alia*, Article 3] and also confirmation of the fact that the person concerned has fulfilled all the training requirements laid down in Title III.'

9. In Title III, Article 23(1) provides that Member States are to require persons wishing to take up and pursue a medical profession to hold one of the qualifications referred to in Article 3 'which guarantees

5 — This point is explicitly stated — though, curiously, only with reference to specialist qualifications — in the 14th recital in the preamble.

that during his complete training period the person concerned has acquired:

(a) adequate knowledge of the sciences on which medicine is based and a good understanding of the scientific methods including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;

(b) sufficient understanding of the structure, functions and behaviour of healthy and sick persons, as well as relations between the state of health and physical and social surroundings of the human being;

(c) adequate knowledge of clinical disciplines and practices, providing him with a coherent picture of mental and physical diseases, of medicine from the points of view of prophylaxis, diagnosis and therapy and of human reproduction;

(d) suitable clinical experience in hospitals under appropriate supervision.'

10. Article 23(2) stipulates that a 'complete period of medical training of this kind must comprise at least a six-year course or 5 500 hours of theoretical and practical instruction given in a university or under the supervision of a university' and Article 23(3) requires candidates for such training to hold a qualification which entitles them to be admitted 'to the universities of a Member State for the course of study concerned'.

11. Article 23(5) provides: 'Nothing in this Directive shall prejudice any facility which may be granted in accordance with their own rules by Member States in respect of their own territory to authorise holders of diplomas, certificates or other evidence of formal qualifications which have not been obtained in a Member State to take up and pursue the activities of a doctor.'

12. Articles 30 et seq. of the Directive lay down further requirements for specific training in general medical practice, which must last at least two years after completion of the six years referred to in Article 23.

13. The Directive has undergone some amendments of detail, but none — before the material time in the present case — which appear relevant to the issues. More recently, however, it has been amended by

Directive 2001/19, which is to be implemented in the Member States before 1 January 2003, [6] and which inserts, *inter alia*, the following Article 42c:

'Member States shall examine diplomas, certificates and other evidence of formal qualifications in the field covered by this Directive obtained by the holder outside the European Union in cases where those diplomas, certificates and other evidence of formal qualifications have been recognised in a Member State, as well as of training undergone and/or professional experience gained in a Member State. The Member State shall give its decision within three months of the date on which the applicant submits his application together with full supporting documentation.' [7]

14. The Commission appended a statement to Directive 2001/19, pointing out that the question of recognition of non-Community qualifications concerned a fairly small number of Community nationals but had already been discussed within the committees of representatives of the relevant national authorities. The Court had recently determined new principles to be applied by the Member States, [8] and the Commission would identify any situations not yet resolved and would propose appropriate solutions if necessary.

15. Directive 93/16 is one of a series of 'sectoral' directives laying down specific rules for mutual recognition of qualifications in certain professions. There is also a general system of recognition, governed in particular by Directives 89/48 and 92/51, [9] neither of which applies to professions having their own specific directives. However, it may be noted that the terms 'diploma' and 'certificate' as defined therein refer essentially to evidence of qualifications awarded by the authorities of a Member State attesting to the completion of education or professional training and entitling the holder to take up or pursue a regulated profession in that Member State,

'provided that the education and training attested by this evidence was received

6 — Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor, OJ 2001 L 206, p. 1. It appears that no Member States have yet notified the Commission of any implementing measures adopted to comply with Directive 2001/19.

7 — It is clear from recital 6 in the preamble that the introduction of this provision is intended to bring the Directive into line with the Court's case-law in Case C-319/92 *Haim* [1994] ECR I-425 and Case C-154/93 *Tawil-Albertini* [1994] ECR I-451 (see paragraph 18 below).

8 — In Case C-238/98 *Hocsman* [2000] ECR I-6623 (see paragraph 18 below). At the hearing in that case, in apparent contradiction to the statement appended to Directive 2001/19, the Commission stated that it had received numerous complaints from professionals in Dr Hocsman's position in different Member States.

9 — Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, OJ 1989 L 19, p. 16; Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, OJ 1992 L 209, p. 25.

mainly in the Community, or outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a Member State, or that the holder thereof has three years' professional experience certified by the Member State which recognised third-country evidence of education and training'. [10]

16. Much more recently — shortly after the hearing in the present case — the Commission presented a draft directive [11] intended to consolidate and simplify the provisions both of the general system and of all the various sectoral directives, and it may be interesting to note some of the proposed provisions.

17. Article 2(2), for example, would allow each Member State to permit holders of non-Community qualifications to perform regulated professional activities on its territory in accordance with its rules, provided that, where minimum training conditions are laid down at Community level (as is the case for doctors), such initial recognition respects those minimum conditions. Article 3(1)(c) defines 'evidence of formal qualifications' as 'diplomas, certificates and other evidence issued by an authority in a Member State and certifying successful completion of professional training obtained *mainly* in the Community', [12] and under Article 3(3) evidence of formal training issued by a non-member country would be regarded as such evidence of formal qualifications if the holder had three years' professional experience, certified by the Member State which recognised that evidence of formal qualifications in accordance with Article 2(2).

The Court's case-law

18. The question of recognition in one Member State of non-Community qualifications already recognised in another Member State, in professions covered by a sectoral directive, has been considered by the Court principally in *Haim*, [13] *Tawil-Albertini* [14] and *Hocsman*. [15] *Haim* and *Tawil-Albertini* concerned the dental profession, governed by a separate though similar directive, whereas *Hocsman*, like the present case, concerned the medical profession, governed by Directive 93/16.

19. The rulings in all three judgments were essentially to the effect that a Community national may not rely — failing any spe-

10 — Article 1(a) and 1(b) of Directive 92/51; Article 1(a) of Directive 89/48 contains substantially identical provisions.

11 — Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications (COM(2002)119 final of 7 March 2002).

12 — Emphasis added.

13 — Cited in note 7 above.

14 — Cited in note 7 above.

15 — Cited above in note 8.

cific provision to that effect — on either of those sectoral directives in order to demand recognition in one Member State of a diploma awarded outside the Community (and with which the directive in question is thus not concerned) but none the less recognised in another Member State. However, Article 43 EC requires the authorities of the host Member State in such circumstances to compare all the qualifications and experience of the person concerned with those required for the practice of the relevant profession in that Member State. If they correspond entirely, the non-Community diploma must be recognised; if they correspond only partially, those authorities are entitled to require the person concerned to show that he has acquired the knowledge and qualifications not attested. [16]

The facts and the main proceedings

20. Dr Malika Tennah-Durez, originally of Algerian nationality, apparently received her secondary education near Lille in the north of France, then studied medicine for six years in Algeria, obtaining a doctorate in medicine in 1989. The last year of that training appears to have been spent as a junior hospital doctor in the Lille area. She continued working in a similar capacity in the same area until 1993, when she married a Belgian national (thereby acquiring Belgian nationality) and decided to pursue her medical studies in that country.

21. In 1994, she was admitted to the seventh year of medical study at the University of Ghent, her Algerian diploma being accepted as sufficient to exempt her from the previous years, apparently on the basis of Article 45(5) of the Decree of 12 June 1991 relating to universities in the Flemish Community, [17] under which examinations passed in a Belgian or foreign institution of higher education may provide partial exemption from examination or a reduction in the duration of study.

22. In 1995 she was awarded the 'academische graad van arts' which, although it does not bear the title mentioned in Article 3 of the Directive, is the diploma now awarded by Flemish universities for the purposes of that provision. It was said at the hearing that the change of name, after the adoption of the Directive, was notified to the Commission and to the authorities of the other Member States, in particular the Conseil National de l'Ordre des Médecins (Council of the national medical association, 'the Conseil National') in France.

23. Dr Tennah-Durez was enrolled as a medical practitioner in West Flanders on 25 October 1995. Over the following two

16 — See in particular *Hocsman*, paragraphs 35 and 36 of the judgment.

17 — *Moniteur Belge* of 4 July 1991.

years, she continued to study at Ghent and was awarded a specific diploma in general medical practice ('academische graad van huisarts') in 1997. She was authorised to practise as a general medical practitioner by ministerial decree of 10 February 1998.

24. It would thus appear that she completed the seventh, eighth and ninth years of the full training course for general medical practitioners in Flanders, as described in paragraphs 13 to 18 of the judgment in *Fédération Belge des Chambres Syndicales de Médecins*,[18] which corresponds to the training referred to in Articles 23 and 30 of the Directive. Under that system, the seventh year of study is both the final year of the seven-year course of study for the basic medical diploma governed by Article 23 of the Directive and the first year of the three-year course of study for the specific diploma in general medicine in accordance with Article 30.

25. In March 1998, Dr Tennah-Durez, wishing to return to the Lille area and practise there, applied to be enrolled on the local medical register. She was registered on 10 September 1998 on the basis of her Belgian diplomas and of a certificate — requested by the French authorities because the designation of her basic diploma was not as listed in Article 3 — from the Belgian Ministry of Health attesting that she possessed the statutory Belgian diploma for a medical doctor and that her specific diploma as a general practitioner was in accordance with the Directive.

26. However, the same ministry then sent three more communications concerning the first Belgian diploma: the first stating that it was not awarded in accordance with Article 23 of the Directive because six of the seven years of study had taken place abroad (although the second diploma was entirely in accordance with the Directive); the second stating that it was indeed the diploma referred to in Article 3 of the Directive and entitled Dr Tennah-Durez to practise medicine in Belgium; and the third certifying that she had completed at least 5 600 hours of theoretical and practical instruction in the course of her studies for her medical diploma (presumably including her training in Algeria). A certificate similar to the third was also issued by the University of Ghent.

27. In those somewhat confused circumstances, the local medical association withdrew its decision to register Dr Tennah-Durez, only to have that withdrawal annulled by the regional association. But that latter decision was itself overturned on 28 April 1999 by the disciplinary section of the Conseil National, essentially on the ground that Dr Tennah-Durez had not completed a sufficient number of hours of study in Belgium to satisfy the requirements of Article 23 of the Directive, and that under Article 23(5) the recognition in

18 — Case C-93/97 [1998] ECR I-4837.

Belgium of her period of study in Algeria had no compulsory effect in France. It also considered (its decision was before the judgment in *Hocsman*) that Article 52 of the EC Treaty (now, after amendment, Article 43 EC) could not apply.

28. Dr Tennah-Durez appealed to the Conseil d'État (Council of State), which has stayed the proceedings and seeks a preliminary ruling on the following questions:

'(i) Are the provisions of Article 23(2) of Council Directive 93/16/EEC of 5 April 1993 relating to the period of medical training that a doctor who is a national of a Member State must have completed, comprising at least a six-year course or 5 500 hours of theoretical and practical instruction given in a university or under the supervision of a university, to be understood as meaning training completed, in its entirety, only in a university of a Member State of the Community or under the supervision of such a university, or do they allow all or part of any training received in a third country to be taken into account?

(ii) Are the national authorities bound by the certificate provided, pursuant to Article 9(5) of the directive, by the competent authorities of the Member State in which the diploma submitted by the person concerned was awarded, which states that the diploma is treated as one of the qualifications or designations set out in Article 3, 5 or 7 of the directive and was awarded following training in accordance with the provisions of Title III thereof, or may they make their own assessment of the said certificate in the light of, in particular, the minimum training requirements prescribed by the directive and required by national legislation in order, in some circumstances, to consider whether, despite the terms of the certificate so issued, the training received by the person concerned meets the requirements of the directive?'

29. Written observations have been submitted by Dr Tennah-Durez, the Conseil National, the Austrian, Belgian, French and Italian Governments and the Commission. The United Kingdom Government presented oral argument at the hearing, as did those who submitted written observations, except the Austrian and Italian Governments.

The first question

30. It is clear from Article 23(5) that a person who holds a non-Community basic medical diploma which has been recognised in one Member State cannot rely on the Directive as it stands in order to obtain automatic recognition in other Member States. That was Dr Hocsman's situation, but Dr Tennah-Durez's case is different. Her Algerian basic medical diploma was

not recognised as such in Belgium but was accepted as exempting her from the first six years of medical training in that Member State; after a further year of training there she was awarded a Belgian diploma. She is not seeking recognition in France of her Algerian diploma or training but of her Belgian diploma.

31. Nor is it disputed that Dr Tennah-Durez was awarded that diploma after completing at least the number of hours and years of medical training required by Article 23(2) of the Directive, or that her training was received in or under the supervision of a university. Moreover, although the point has not been discussed, it is perhaps unlikely that her training failed to provide her with the knowledge and experience outlined in Article 23(1). [19] The possible stumbling-block is the fact that six of her seven years of training prior to the award of her basic diploma took place in or under the supervision of a university in a non-member country. [20]

32. Dr Tennah-Durez has stressed that, in addition to having her knowledge and experience accepted by the Belgian authorities as exempting her from the first six years of training, she passed the same final examination as those who had studied entirely in Belgium and was thus demonstrably of the same level as her colleagues whose identical diplomas qualified for automatic recognition. Other Member States can have no less confidence in the standard demonstrated by her results than in that demonstrated by any other holder of a Belgian diploma.

33. Those arguments are not unreasonable, and might be supported by the wording of Article 23. Paragraph 2 of that provision requires the relevant instruction to be given in or under the supervision of 'a university', with no further specification, while paragraph 3 requires candidates for medical training to hold a qualification entitling them to admission to 'the universities of a Member State'. If, in Article 23(2), the legislature had meant 'a university of a Member State', might it not have been expected to say so?

34. However, it is important to recognise that an essential feature of the Directive is that automatic mutual recognition of diplomas goes hand-in-hand with coordination of the provisions governing access to the medical profession, including training requirements, and is based on mutual trust as to the comparable standard of qualifications throughout the Community.

19 — See paragraph 9 above.

20 — Although the sixth year appears to have been certified by — and may thus perhaps be considered to have taken place under the supervision of — the University of Lille II, in France.

35. That trust concerns in my view primarily the training given rather than the verification of knowledge and experience. Article 23(1) of the Directive refers to a qualification which guarantees that the holder has *acquired* certain knowledge and experience *during a complete training period*, not that he or she *possesses* that knowledge and experience, and Article 23(2) lays down material requirements for the *training*. Moreover, the skills needed to practise medicine are acquired over a relatively long period and will normally be assessed at many stages over that period, not simply at the end of the final year. Important though a final assessment undoubtedly is, there would be obvious pitfalls in assessing a person's fitness to practise medicine on that basis alone.

36. If the mutual trust in question is between Member States and is based primarily on training then it would seem to follow that it must be based on training in the Community — instruction given in or under the supervision of a university of a Member State. The first recital in the preamble to Directive 75/363, [21] a precursor of the present Directive, noted moreover that it was 'the comparable nature of training courses in the Member States' which enabled coordination to be confined to 'the requirement that minimum standards be observed', and the element of mutual trust in training given in a Member State has been stressed by the Court in comparable contexts with regard to dental qualifications [22] and specialist medical qualifications. [23]

37. Furthermore, as the Directive now stands, Article 23(5) clearly excludes from automatic recognition a non-Community diploma whose holder has been authorised to practise medicine in a Member State. Any distinction between that situation and one in which the Member State had recognised not the diploma but the training acquired outside the Community — by awarding a new diploma on the basis of that training — would be artificial and liable to deprive Article 23(5) of any real effect. [24] That holds true even if authorisation to practise is based on a real assessment of knowledge and experience since, as I have said, the basis for automatic recognition under the Directive lies not in success in an examination but in completion of training in conjunction with such success.

38. But a significant feature of Dr Tennah-Durez's situation is that part of her training was acquired in or under the supervision of a university in a Member State. Can a diploma awarded by a Member State in such circumstances qualify for automatic recognition and, if so, what proportion of the training must have taken place in the

21 — Cited above in note 4.

22 — See *Tawil-Albertini*, cited above in note 7, paragraphs 11 and 12 of the judgment.

23 — See Case C-131/97 *Carbonari and Others* [1999] ECR I-1103, paragraphs 38 to 43 of the judgment.

24 — I am assuming for the moment instruction given entirely within or entirely outside the Community — I shall consider the 'mixed' situation below (paragraph 38 et seq.).

Community? A number of submissions have been made to the Court on that question.

39. The Italian Government considered that training must be given or supervised in its entirety by a university in a Member State. The United Kingdom however was concerned that courses involving limited exchange visits to universities outside the Community should not be excluded, while the Austrian and French Governments, together with the Commission, considered essentially that the proper criterion was that the major part of the training — including in particular in the submission of the French Government and the Commission the final part — should be in the Community.

40. The Belgian Government, on the other hand, whilst accepting that Dr Tennah-Durez's basic diploma was not awarded in accordance with Article 23 of the Directive because her training was acquired mainly outside the Community, pointed to a possible anomaly that might ensue from a strict rule requiring more than half of the training to be acquired in the Community: a candidate with a certain level of knowledge and experience acquired outside the Community might qualify for admission into the fifth of seven years of study in a Member State with the result that his or her diploma could not qualify for automatic recognition, whereas a candidate with a lower level, admitted only into the fourth year, would obtain a diploma that would have to be recognised.

41. Whilst a rule that more than half of the training on the basis of which a Community diploma was awarded, including the final year or years of that training, must have been acquired in the Community in order for the diploma to qualify for automatic recognition seems in no way unreasonable, I can discern no basis for it in the Directive as it stands. On the contrary, it would appear clear from the provisions as I have analysed them above that all the training must be given or supervised by a university in a Member State. The specific acceptance of training undertaken partly outside the Community in the general system,[25] coupled with the absence of any reference to it in the Directive, tends to confirm that view.

42. There are however two important points to be made in that regard.

43. The first is that the words 'under the supervision of' allow a certain latitude and in particular allow a Community university to send its students for part of their training in an establishment with which it has links in a non-member country, without thereby disqualifying the diploma awarded from automatic recognition under the Directive,

25 — See paragraph 15 above.

provided that the training is indeed under the university's supervision — in other words that the university plays an active role with regard to the content and quality of the instruction given.[26] It would appear similarly acceptable for a Community university to admit to a year of study other than the first a student who had begun training in a university outside the Community with which it had links of a similar kind and over whose instruction it exercised such supervision. That, however, was not the case for Dr Tennah-Durez whose training in Algeria (or at least the first five years of it) seems to have taken place entirely outside the control of a university in the Community.

44. The second is that Community legislation is evolving in the field of mutual recognition of qualifications in general and that as it evolves a tendency can be seen towards greater acceptance of training outside the Community as an element in a qualification worthy of automatic recognition throughout the Community. Whilst the first stages of coordination and recognition may have been based on a more limited degree of mutual trust between Member States, circumstances seem to be increasingly propitious for the legislature to adopt provisions based on a broader degree of trust extending not only to training provided in other Member States but also to training and qualifications obtained outside the Community but recognised in those States.

45. Thus Article 42c of the Directive, which must be implemented before 1 January 2003,[27] confirms the requirement in the case-law that non-Community medical diplomas recognised in one Member State must be taken into consideration in other Member States. And if the Commission's proposal[28] is adopted, such a diploma will qualify for automatic recognition once its holder has three years' professional experience certified by the first Member State, as will a diploma awarded in a Member State but based partly (though not mainly) on training acquired outside the Community.

46. I therefore take the view that as the law stands — and without casting the slightest doubt on the quality of medical training in non-member countries, which will often be of a standard equal to and in some cases higher than that dispensed in Member States — the mutual trust on which the

26 — In at least the majority of the language versions of the Directive, the term 'supervision' and its equivalents — 'Aufsicht', 'orientaçao', 'surveillance', 'tilsyn', 'toezicht' etc. — imply active control rather than passive verification.

27 — See paragraph 13 above.

28 — See paragraphs 16 and 17 above.

Directive is based requires Article 23(2) to be interpreted as referring solely to theoretical and practical instruction given in, or under the supervision of, a university in a Member State.

The second question

47. The Directive coordinates minimum training requirements so that qualifications awarded on the basis of those requirements are recognised throughout the Community. Where a Member State awards in accordance with Article 23 a diploma, certificate or other evidence of formal qualification listed in Article 3, that qualification must be recognised, automatically and unconditionally, in the other Member States.[29] There must moreover be a presumption that a qualification listed in Article 3 is awarded in accordance with Article 23, since otherwise the whole system could easily be disabled and the aim of facilitating freedom of movement for doctors considerably impaired.

48. The role played by Articles 9(5) and 22 within that overall scheme seems clear.

49. In accordance with Article 9(5), if a qualification is not listed in Article 3, it must still be recognised if the issuing Member State certifies it to have been awarded following training in accordance with Article 23.[30] Conversely, if no such certificate is issued, there is no requirement for automatic recognition in the context of the Directive.

50. Under Article 22 the authorities of the host Member State may also in the event of justified doubt ask the issuing Member State for confirmation that the training was indeed in accordance with Article 23; again recognition must be automatic and unconditional if such confirmation is given but if not the situation falls outside the scope of the Directive.[31] I would stress however that Article 22 applies only exceptionally and in the event of *justified* doubt — such as might be raised by specific information contained in the application for recognition, for example — rather than mere

29 — See also *Hocsman*, cited above in note 8, paragraph 33 of the judgment, Case C-16/99 *Erpelding* [2000] ECR I-6821, paragraph 23, and, with regard to the previous directives, Case C-277/93 *Commission* v *Spain* [1994] ECR I-5515, paragraphs 13 and 14.

30 — It is true that Article 9, which is entitled 'Existing circumstances', deals largely with problems raised by qualifications and/or training acquired or commenced before the adoption of the Directive. Thus, Article 9(5) might be thought, as the United Kingdom suggested at the hearing, to cover only qualifications no longer awarded under the same designation but none the less attesting to training in accordance with Article 23. There is however nothing in its wording to limit it in that way, and it seems reasonable and desirable that it should also cover changes in designation after the adoption of the Directive.

31 — Articles 2, 3 and 23 apply to basic qualifications in medicine. Parallel provisions to which the same considerations apply are to be found for specialised qualifications common to all Member States in Articles 4, 5, 24 to 26 and 29 and for specialised qualifications peculiar to two or more Member States in Articles 6, 7, 24, 25, 27 and 29.

suspicions derived from, say, the applicant's original nationality; it does not entitle national authorities to indulge in delaying tactics or fishing expeditions, conduct which would run completely counter to the spirit of the Directive.

51. In the present case, the Belgian authorities do not appear at any stage to have certified that Dr Tennah-Durez's basic diploma or the training on which it was based were in accordance with Article 23. Rather, they gave various indications from which, taken together, it was difficult to conclude unequivocally either that the diploma must be automatically recognised or that it did not qualify for such recognition. Although, as regards its designation, the diploma was clearly stated to correspond to that listed in Article 3, it was also stated not to be in accordance with Article 23 because six of the seven years of training involved were not undertaken in Belgium.

52. There was thus no certificate issued under Article 9(5) stating that the diploma was awarded following training in accordance with Article 23, although such a certificate, had it been issued, would have been binding on the French authorities. In addition, those authorities may have had real grounds for questioning whether Dr Tennah-Durez had completed seven years of full-time training in Belgium immediately prior to the award of her diploma, so that a request under Article 22 was appropriate. The precise situation was in any event unclear without closer scrutiny.

53. In such clearly exceptional circumstances, it was in my view both acceptable and proper for the French authorities first to examine the qualification more thoroughly in order to ascertain its status in the light of the Directive with a view to deciding whether it should be granted recognition on the basis of that status.

Article 43 EC

54. However, it is not enough to note that, as I have concluded in the context of the national court's first question, in the light of such an examination Dr Tennah-Durez's Belgian diploma does not qualify for automatic, compulsory recognition under the Directive. It is also necessary, under Article 43 EC as interpreted by the Court and in accordance with the new Article 42c of the Directive, whenever a Community national holding medical qualifications obtained outside the Community wishes to practise medicine in a Member State other than his or her home State, to carry out a further individual and objective assessment of that person's situation.

55. That obligation has been most recently and most clearly stated by the Court in *Hocsman*: [32] 'where, in a situation not regulated by a directive on mutual recognition of diplomas, a Community national applies for authorisation to practise a profession access to which depends, under national law, on the possession of a diploma or professional qualification, or on periods of practical experience, the competent authorities of the Member State concerned must take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules'.

56. Thus Dr Tennah-Durez's Belgian diploma, although it does not qualify for automatic, compulsory recognition under the Directive, must be taken into account by the French authorities, together with her Algerian diploma and the training on which it was based including her final year of training in France, her subsequent professional activity in France over the following three or four years, her two years of specific training in general medical practice in Belgium and the diploma awarded to her as a result, and any other professional experience she may have gained in Belgium or elsewhere. Only if the knowledge and abilities evidenced by those qualifications and experience fall short of those required by the national rules are the French authorities entitled to require Dr Tennah-Durez to show — solely — that she has acquired the skills not attested. [33]

57. Although the Court is in no position to carry out such an assessment, I suggest that there would have to be some very strong reason indeed before it could properly be found that the knowledge and abilities of a person who has completed five years of medical training in a non-member country, followed practically without interruption by six or seven years of medical training and professional activity within the Community, fall short of the standard required to practise medicine in the Community.

58. If that were to be the finding, however, an adequately-reasoned decision, against which an appeal must lie, would have to be given. [34] Moreover, as from 1 January 2003, such a decision must be given within three months in accordance with the new Article 42c of the Directive. That latter

32 — Cited above in note 8, paragraph 40 of the judgment.

33 — See also *Hocsman*, paragraphs 35 and 36 of the judgment.

34 — See paragraph 50 of my Opinion in *Hocsman*, and the case-law cited there.

requirement would appear to have the consequence that, if faced with a situation of uncertainty as to the status of a qualification for the purposes of automatic recognition, national authorities will not be entitled to postpone a decision based on an assessment of all the applicant's qualifications until after the uncertainty has been resolved, unless both steps can be completed within the three months.

Conclusion

59. I am therefore of the opinion that the Court should answer the questions raised by the Conseil d'État in the following manner:

— Article 23(2) of Council Directive 93/16/EEC is to be interpreted as referring solely to instruction given in, or under the supervision of, a university in a Member State.

— The authorities of a Member State, asked to recognise a diploma, certificate or other evidence of formal qualifications listed in Articles 3, 5 or 7 of Directive 93/16, are in principle bound by a statement from the competent authorities of the issuing Member State that such a document is a qualification listed in the relevant article and was awarded following training in accordance with the relevant provisions of Title III of that Directive. However, where such a statement — which may be requested only in the circumstances set out in Article 9(5) or 22 of that Directive — is equivocal, they may examine the qualification in order to ascertain its status in the light of the Directive.

— Where a Community national holding a medical qualification which has been awarded in a Member State and is listed in Directive 93/16, but does not attest to training acquired entirely in accordance with Article 23 thereof, applies for authorisation to practise medicine in another Member State, the competent authorities of the latter must take into consideration all the diplomas, certificates, other evidence of formal qualifications and relevant experience of the person concerned, by comparing the knowledge and abilities thereby evidenced with those required by the national rules, and may not refuse authorisation unless they fall short of those requirements and the applicant cannot show that he has acquired the knowledge and abilities not attested to.