

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Petitions*

24.04.2009

## NOTICE TO MEMBERS

Subject: **Petition 0930/2005 by Marc Stahl (German) concerning the recognition in Germany of diplomas in physiotherapy obtained in the Netherlands**

### 1. Summary of petition

The petitioner, who is working as a physiotherapist in Germany and whose training in the Netherlands included manual therapy, indicates that he applied in Germany for authorisation to practice this technique for an appropriate fee. However, neither his qualifications nor the institute where he learned these techniques were recognised by the relevant German organisations (VdAK and IKK). The petitioner argues that he is being treated less favourably than his Dutch colleagues working in Germany who are able to command higher earnings with the same qualifications. Furthermore, the authorities have ruled that the petitioner is entitled to practice only in the locality in which he is established and not the whole of Germany, thereby limiting the area in which he is able to make house calls.

### 2. Admissibility

Declared admissible on 15 February 2006. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 3 July 2006.

The information sent by the petitioner is not sufficient to enable the Commission to express an opinion on his case. The Commission will therefore write to the petitioner to ask him for further information. It will keep the Committee on Petitions informed of any further developments.

**4. Further Commission reply**, received on 12 December 2006.

The petitioner obtained recognition in Germany of his diploma in physiotherapy issued in the Netherlands. However, in Germany, the practise of this specialisation is subject to completion of further vocational training, after an individual has acquired a physiotherapy diploma. The German authorities have refused to give the petitioner the authorisation requested on the grounds that the institution which issued his diploma in the Netherlands is not included on a list of institutions approved by the German authorities for the provision of further training.

The Commission has registered the petitioner's complaint. Since the petitioner gave permission to divulge his identity, on 4 October 2006 the Commission sent a letter to the German authorities to request explanations and a copy of the German rules applicable in this case.

The Commission will inform the Committee on Petitions of the reply given by the German authorities once it has been received and considered.'

**5. Further Commission reply**, received on 28 February 2007.

On 4 October 2006, the Commission wrote to the German authorities asking them for explanations concerning the petitioner's case and for a copy of the German regulations applicable to the case in question.

On 1 December 2006, the German authorities wrote that, if the reason for the refusal to authorise the petitioner to practise manual therapy was indeed that the petitioner had not obtained his qualification from a training establishment listed in Annex 2 to the recommendations, such a refusal was unjustified since the framework recommendations did not preclude the possibility of the qualification in question being issued by an establishment not listed in Annex 2.

The German authorities consequently indicated that they would call on the body responsible to review the petitioner's case.

A letter was sent to the petitioner to ask whether in the meantime his case had been reviewed and, if so, what decision had been taken.

The Commission will inform the Committee on Petitions of the reply given by the petitioner.

**6. Further Commission reply**, received on 7 March 2008.

On 29 June 2007, the Commission addressed a letter of formal notice to Germany because it had not implemented Directive 92/51/EEC on the recognition of qualifications for the exercise of the profession of physiotherapist specialised in manual therapy.

In their reply of 26 October 2007, the German authorities indicated that the petitioner had still not provided any proof that he indeed has the required qualifications in manual therapy. They also indicated that Germany will introduce a procedure for recognition of

qualifications of physiotherapists specialised in manual therapy obtained in other Member States and provided details of this procedure.

However, as there are still issues to be clarified in respect of this mutual recognition procedure, the Commission will again write to the German authorities. It will also ask the petitioner to send a copy of his qualifications certificate to the German authorities.

The Commission will inform the Committee on Petition of any progress in this file.

#### **7. Further Commission reply**, received on 26 September 2008.

On 29 June 2007, the Commission addressed to Germany, on the basis of Article 226 of the Treaty, a letter of formal notice as Germany has not implemented Directive 92/51/EEC<sup>1</sup> on the recognition of qualifications for the profession of physiotherapist specialised in manual therapy.

Germany replied on 26 October 2007. In this reply, Germany has indicated that the petitioner has still not provided a copy of a qualification attesting that he is qualified in manual therapy. Germany has also indicated that it will introduce a procedure for recognition of qualifications of physiotherapists specialised in manual therapy obtained in other Member States and has provided details on this procedure.

Directive 92/51/EEC has been repealed by Directive 2005/36/EC<sup>2</sup> on recognition of professional qualifications with effect from 20 October 2007.

The procedure proposed by the German authorities is not in conformity with the rules of Directive 2005/36/EC which had to be implemented in Member States by 20 October 2007.

Therefore, the Commission decided to make further formal steps against Germany. On 27 June 2008, the Commission sent to Germany a complementary letter of formal notice as Germany has failed to fulfil its obligations under Directive 2005/36/EC. At the moment, the Commission is waiting for the observations of the German authorities. After examining these observations, or if no observations have been submitted within the prescribed time-limit, the Commission may, if appropriate, issue a reasoned opinion as provided for in Article 226 of the Treaty.

The Commission will inform the Committee on Petitions of any progress in this file.

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<sup>1</sup> 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 L 209 of 24.07.1992, p. 25

<sup>2</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255 of 30.9.2005, p. 22

**8. Further reply from the Commission**, received on 25 November 2008.

On 27 June 2008, the Commission forwarded to Germany a further a letter of formal notice for noncompliance with Directive 2005/36/EC on the recognition of professional qualifications with regard to its legislation concerning the recognition of physiotherapy qualifications obtained in other Member States.

The German authorities replied on 26 August 2008 announcing their intention of bringing the offending legislation into line with Directive 2005/36/EC and indicating that they were in the process of formulating the requisite draft provisions. Concerning the petitioner, they refer to a judgement handed down on 2 June 2008 by the Berlin social affairs court to the effect that the petitioner's qualifications do not meet German statutory requirements applicable to manual therapy practitioners. The German authorities indicate that they do not know whether the petitioner has lodged an appeal but point out that no further assessment may be made of his qualifications while legal proceedings are still under way.

The petitioner has accordingly written to the petitioner requesting a copy of the judgement and asking whether he has lodged an appeal.

The Commission will keep the Committee on Petitions informed of any further developments.

**9. Further reply from the Commission**, received on 24 April 2009.

As far as the original complaint is concerned, on 27 June 2008 the Commission sent Germany a complementary letter of formal notice as Germany had not implemented Directive 2005/36/EC on the recognition of professional qualifications<sup>1</sup> for the profession of physiotherapists specialised in manual therapy. Germany replied on 26 August 2008 indicating that they would modify their legislation in order to comply with Directive 2005/36/EC.

On 4 February 2009 Germany sent a letter indicating the proposed changes in the legislation. This proposal is being examined by the Commission.

The Commission will inform the Committee on Petition of the outcome of the analysis.

Regarding the petitioner's individual application for the recognition of his qualification, Germany stated in its letter of 26 August 2008 that the German authorities could not reconsider their decision as there was a pending judicial procedure in petitioner's case. On 2 June 2008 the Social Tribunal of Berlin held against the petitioner, stating that he did not have the appropriate qualification for practicing manual therapy in Germany. The petitioner's legal representative informed the Commission on 8 December 2008 that the petitioner challenged

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<sup>1</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255/22, 30.09.2005.

the judgement of the Social Tribunal of Berlin and the appeal was pending before the Social Court of Berlin-Brandenburg. In its letter of 4 February 2009, Germany reiterated its position that the German authorities could not reconsider their decision in the petitioner's application as there was a pending judicial procedure in petitioner's case.

On 8 November 2008 the petitioner sent a letter with complementary information. In this letter he alleges that the RVO health insurance funds apply discriminatory treatment *vis-à-vis* manual therapists who practice in East Berlin: they are reimbursed less for their services than their colleagues practicing in West Berlin or in the Western part of Germany. He also argues that the behaviour of the RVO health insurance funds is contrary to Directive 2005/29/EC on unfair business practices<sup>1</sup>.

The Commission has no jurisdiction to deal with the issue of different amount of remuneration paid for manual therapists practicing in different regions of Germany. This differentiation cannot be considered as a breach of Articles 12, 43 or 49 of the EC Treaty, and it is a matter solely for the national authorities concerned. The petitioner does not explain in his letter of 8 November 2008 how Directive 2005/29/EC on unfair business practices is infringed by the RVO health insurance funds.

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<sup>1</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) OJ L 149/22, 11.06.2005