



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 September 2013*

(Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Directive 2005/36/EC — Recognition of professional qualifications — Dental profession — Specific nature and distinction from the medical profession — Common training)

In Case C-492/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 19 October 2012, received at the Court on 5 November 2012, in the proceedings

Conseil national de l'ordre des médecins

v

Ministre de l'Enseignement supérieur et de la Recherche,

Ministre des Affaires sociales et de la Santé,

intervening party:

Conseil national de l'ordre des chirurgiens-dentistes,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Löhmus, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Conseil national de l'ordre des médecins, by J. Barthelemy, avocat,
- the Conseil national de l'ordre des chirurgiens-dentistes, by F. Thiriez, avocat,
- the French Government, by D. Colas, N. Rouam and F. Gloaguen, acting as Agents,
- the Czech Government, by M. Smolek, acting as Agent,

* Language of the case: French.

— Ireland, by E. Creedon, acting as Agent,

— European Commission, by H. Støvlbæk and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22), as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 311, p. 1, 'Directive 2005/36').
- 2 The request has been made in the context of proceedings between the Conseil national de l'ordre des médecins (National Council of the Medical Association, 'the CNOM') and the ministre de l'Enseignement supérieur et de la Recherche (Minister for Higher Education and Research), on the one hand, and the ministre des Affaires sociales et de la Santé (Minister for Social Affairs and Public Health), on the other, the Conseil national de l'ordre des chirurgiens-dentistes (National Council of the Association of Dental Surgeons) intervening, concerning the lawfulness of the order of 31 March 2011 fixing the list of training courses leading to qualifications and the rules on diplomas in specialised dentistry ('the contested order').

Legal context

European Union law

- 3 Directive 2005/36 repeals Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1978 L 233, p. 1), Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners (OJ 1978 L 233, p. 10), and 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).
- 4 Recital 22 of Directive 2005/36 states:

'All Member States should recognise the profession of dental practitioner as a specific profession distinct from that of medical practitioner, whether or not specialised in odontostomatology. Member States should ensure that the training given to dental practitioners equips them with the skills needed for prevention, diagnosis and treatment relating to anomalies and illnesses of the teeth, mouth, jaws and associated tissues. The professional activity of the dental practitioner should be carried out by holders of a qualification as dental practitioner set out in this Directive.'
- 5 Article 21 of that directive, concerning the principle of automatic recognition, provides:

'1. Each Member State shall recognise evidence of formal qualifications as doctor giving access to the professional activities of doctor with basic training and specialised doctor, as nurse responsible for general care, as dental practitioner, as specialised dental practitioner, as veterinary surgeon, as pharmacist and as architect, listed in Annex V, points 5.1.1, 5.1.2, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.6.2

and 5.7.1 respectively, which satisfy the minimum training conditions referred to in Articles 24, 25, 31, 34, 35, 38, 44 and 46 respectively, and shall, for the purposes of access to and pursuit of the professional activities, give such evidence the same effect on its territory as the evidence of formal qualifications which it itself issues.

...

7. Each Member State shall notify the Commission of the legislative, regulatory and administrative provisions which it adopts with regard to the issuing of evidence of formal qualifications in the area covered by this Chapter.

...

The Commission shall publish an appropriate communication in the *Official Journal of the European Union*, indicating the titles adopted by the Member States for evidence of formal qualifications and, where appropriate, the body which issues the evidence of formal qualifications concerned, the certificate which accompanies it and, where appropriate, the corresponding professional title referred to in Annex V, points 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2, 5.6.2 and 5.7.1 respectively.'

6 Article 24(2) of that directive, concerning basic medical training, provides:

'Basic medical training shall comprise a total of at least six years of study or 5500 hours of theoretical and practical training provided by, or under the supervision of, a university.

...'

7 Article 25 of Directive 2005/36 concerning specialist medical training, is worded as follows:

'1. Admission to specialist medical training shall be contingent upon completion and validation of six years of study as part of a training programme referred to in Article 24 in the course of which the trainee has acquired the relevant knowledge of basic medicine.

2. Specialist medical training shall comprise theoretical and practical training at a university or medical teaching hospital or, where appropriate, a medical care establishment approved for that purpose by the competent authorities or bodies.

The Member States shall ensure that the minimum duration of specialist medical training courses referred to in Annex V, point 5.1.3 is not less than the duration provided for in that point. Training shall be given under the supervision of the competent authorities or bodies. It shall include personal participation of the trainee specialised doctor in the activity and responsibilities entailed by the services in question.

...

4. The Member States shall make the issuance of evidence of specialist medical training contingent upon possession of evidence of basic medical training referred to in Annex V, point 5.1.1.

...'

8 Article 34 of Directive 2005/36 which concerns basic dental training provides:

'1. Admission to basic dental training presupposes possession of a diploma or certificate giving access, for the studies in question, to universities or higher institutes of a level recognised as equivalent, in a Member State.

2. Basic dental training shall comprise a total of at least five years of full-time theoretical and practical study, comprising at least the programme described in Annex V, point 5.3.1 and given in a university, in a higher institute providing training recognised as being of an equivalent level or under the supervision of a university.

...

3. Basic dental training shall provide an assurance that the person in question has acquired the following knowledge and skills:

- (a) adequate knowledge of the sciences on which dentistry is based and a good understanding of scientific methods, including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data;
- (b) adequate knowledge of the constitution, physiology and behaviour of healthy and sick persons as well as the influence of the natural and social environment on the state of health of the human being, in so far as these factors affect dentistry;
- (c) adequate knowledge of the structure and function of the teeth, mouth, jaws and associated tissues, both healthy and diseased, and their relationship to the general state of health and to the physical and social well-being of the patient;
- (d) adequate knowledge of clinical disciplines and methods, providing the dentist with a coherent picture of anomalies, lesions and diseases of the teeth, mouth, jaws and associated tissues and of preventive, diagnostic and therapeutic dentistry;
- (e) suitable clinical experience under appropriate supervision.

This training shall provide him with the skills necessary for carrying out all activities involving the prevention, diagnosis and treatment of anomalies and diseases of the teeth, mouth, jaws and associated tissues.'

9 Article 35 of that directive, concerning specialist dental training, provides:

'1. Admission to specialist dental training shall entail the completion and validation of five years of theoretical and practical instruction within the framework of the training referred to in Article 34, or possession of the documents referred to in Articles 23 and 37.

...

3. The Member States shall make the issuance of evidence of specialist dental training contingent upon possession of evidence of basic dental training referred to in Annex V, point 5.3.2.'

10 Article 36 of that directive regulates the pursuit of the professional activities of dental practitioners in the following manner:

'1. For the purposes of this Directive, the professional activities of dental practitioners are the activities defined in paragraph 3 and pursued under the professional qualifications listed in Annex V, point 5.3.2.

2. The profession of dental practitioner shall be based on dental training referred to in Article 34 and shall constitute a specific profession which is distinct from other general or specialised medical professions. Pursuit of the activities of a dental practitioner requires the possession of evidence of formal qualifications referred to in Annex V, point 5.3.2. Holders of such evidence of formal qualifications shall be treated in the same way as those to whom Articles 23 or 37 apply.

...'

- 11 Annex V to Directive 2005/36, concerning recognition on the basis of coordination of the minimum training conditions, prescribes the evidence of formal qualifications in basic and specialised medical training both for doctors and dental practitioners.
- 12 Among the titles of the training courses in specialised medicine listed in point 5.1.3 of that annex is, in particular, 'dental, oral and maxillo-facial surgery (basic medical and dental training)' assuming the 'completion and validation of basic medical studies (Article 24) and, in addition, completion and validation of basic dental studies (Article 34)'. The evidence of training courses in specialised medicine in that field is subject to the regime of mutual recognition as regards nine Member States, namely: the Kingdom of Belgium, the Federal Republic of Germany, Ireland, the Republic of Cyprus, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland.
- 13 Other than the training course in 'dental, oral and maxillo-facial surgery (basic medical and dental training)', point 5.1.3 of Annex V to Directive 2005/36 also refers to the training course in 'maxillo-facial surgery (basic medical training)'. As regards the French Republic, that annex provides for the title '[c]hirurgie maxillo-faciale et stomatologie' (maxillo-facial surgery and stomatology).
- 14 As regards the evidence of basic formal qualifications of dental practitioners, the title of 'chirurgien-dentiste' (dental surgeon) is referred to in point 5.3.2 of that annex as a professional title used in France.
- 15 As regards the evidence of formal qualifications of specialised dentists, point 5.3.3. of Annex V to Directive 2005/36 contains a heading entitled 'oral surgery'. The titles of 16 Member States are recognised in that regard, the French Republic not being included among those Member States.
- 16 That annex also specifies, at point 5.3.1, the study programme for dental practitioners, in particular as regards medico-biological subjects and general medical subjects. Those subjects include, inter alia, anatomy, embryology, histology, including cytology, physiology, biochemistry (or physiological chemistry), pathological anatomy, general pathology, pharmacology, microbiology, preventive medicine and epidemiology, radiology, general surgery, general medicine, including paediatrics, oto-rhino-laryngology, dermato-venereology and anaesthetics. Anaesthetics and sedation in dentistry, special surgery, special pathology and dental radiology are included in the subjects directly related to dentistry included in that study programme.

French law

- 17 Article R. 4127-70 of the Code de la Santé Publique (Public Health Code) reads as follows:

'All doctors are, in principle, authorised to perform all acts relating to diagnosis, prevention and treatment. A doctor shall not, however, save in exceptional circumstances, undertake or continue care or issue prescriptions in areas that exceed his knowledge, experience and the resources at his disposal'.

18 Article R. 4127-204 of that code provides:

'A dental surgeon shall in no circumstances exercise his profession in conditions liable to compromise the quality of the care and treatment provided or patient safety. He shall, in particular, take, and cause his assistants to take, all measures necessary to prevent transmission of disease.

Save in exceptional circumstances, he shall not perform acts, provide care or issue prescriptions in areas that exceed his professional competence or the physical resources at his disposal.'

19 Article 634-1 of the Education Code, as amended by Article 43 of Law No 2009-879 of 21 July 2009 (JORF of 22 July 2009, p. 12184), provides:

'The postgraduate course in dental studies, known as an internship in dentistry, is accessible through a national competitive examination for students who have successfully completed the undergraduate course in dental studies.

Students nominated as dental interns after the competitive examination can access those postgraduate training courses leading to qualifications, the list of which is drawn up by the ministers responsible for higher education and health. The choice of training and of medical teaching hospital is dependent on class ranking following the internship examinations.

After successfully completing this postgraduate course and submitting a thesis, interns receive, in addition to a state diploma of doctor of dental surgery, a diploma mentioning the qualification obtained.

...'

20 Under Article 9 of Decree No 2011-22 of 5 January 2011 on the structure of the postgraduate course in dental studies (JORF of 7 January 2011, p. 447):

'The list of postgraduate training courses leading to qualifications in dental studies shall be fixed by an order of the ministers responsible for higher education and health. Some training courses may be common to both medicine and dentistry.'

21 Article 1 of the contested order provides:

'The list of training courses leading to qualifications and to the issuing of diplomas in specialised studies accessible to postgraduate dental students shall be fixed as follows:

- diploma in specialised oral surgery, training course common to medicine and dentistry;
- diploma in specialised dento-facial orthopaedics;
- diploma in specialised in bucco-dental medicine.'

22 Article 3 of that order provides:

'Dentistry interns having obtained the necessary ranking in the competition giving access to postgraduate dental studies shall be eligible to register for the diplomas in specialised studies referred to in Article 1 of the present order.

Medical interns having obtained the necessary ranking in the national medical examinations giving access to postgraduate specialised medical studies shall be eligible to register in respect of training courses common to medicine and dentistry.'

- 23 The theoretical training in oral surgery, specified in the Annex to the contested order, specifically includes training in surgery on the periapex and on odontogenic and non-odontogenic cysts of the jaws, pre-prosthetic and implant surgery, the study of benign tumour conditions, salivary conditions and orthodontic-surgical and orthognathic treatment.
- 24 That annex also provides that these university studies specifically include practical training lasting at least three semesters in a specialist dentistry department and three semesters in a specialist maxilla-facial department. Under the provisions of Articles R. 4127-70 and R. 4127-204 of the Code de la Santé Publique, both doctors specialising in oral surgery and dental surgeons with the same specialty may lawfully and customarily perform all the acts connected with their specialty without breaching their codes of professional conduct.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 25 The CNOM brought an application before the Conseil d'État by which it sought annulment of the contested order as being *ultra vires*, on the ground, inter alia, that that order was incompatible with Directive 2005/36 and, in particular, with Articles 24, 25 and 36 thereof. The Conseil national de l'ordre des chirurgiens-dentistes intervened, in the case in the main proceedings, in support of the ministers who adopted that order.
- 26 The contested order creates a common training course leading to a qualification aimed at postgraduate student interns in dentistry and postgraduate student interns in medicine, resulting in the award of a diploma in specialised oral surgery.
- 27 In its application before the referring court, the CNOM raised a plea alleging that Article 9 of Decree No 2011-22 and the contested order adopted under that article are incompatible with the provisions of Directive 2005/36, on the grounds that the subjects taught in the new postgraduate training course, accessible to both medical students and dentistry students, come within areas of specialist medicine within the meaning of that directive, and that the creation of a common postgraduate training course creates a profession that is common to doctors and dentists.
- 28 In the view of the referring court, the skills certified by the diploma in oral surgery, introduced by the contested order, come under the medical disciplines of stomatology and maxillofacial surgery, as well as under dental disciplines.
- 29 According to that court, having regard to their initial training, and because the dental students selected to take this diploma receive additional training in medical disciplines, the CNOM cannot claim that the legislature has committed a manifest error of assessment by taking the view that dental students are capable of acquiring the medical skills needed to perform the acts for which they are trained during their internship.
- 30 However, the referring court points out that, in the light of Article 36 of Directive 2005/36, the profession of dental practitioner is based on the dental training referred to in Article 34 of that directive and constitutes a specific profession which is distinct from other general or specialised medical professions. Thus, the answer to the plea put forward by the CNOM depends on whether, on the one hand, Directive 2005/36 authorises a Member State to introduce a common training course leading to a qualification that results in doctors and dentists practising the same specialty and, on the other hand, whether the provisions of that directive on specialties related to medicine must be interpreted as covering all or part of the training in oral surgery stipulated in the annex to the contested order.

31 It is on that basis that the Conseil d'État decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

- '(1) Does the specificity requirement for the profession of dental practitioner, laid down by Article 36 of Directive 2005/36, prevent the creation of a postgraduate university training course leading to a qualification common to medical students and dental students?
- (2) Must the provisions of Directive 2005/36 on specialties related to medicine be construed as meaning that disciplines such as those listed in [point 23 of the present judgment] may not be included in a dental training course?'

Consideration of the questions referred

The first question

- 32 By its first question, the referring court asks, in essence, whether Directive 2005/36 must be interpreted as precluding the creation, by a Member State, of a specialised training course in oral surgery, such as that in issue in the main proceedings, common to holders of diplomas in dentistry and those who have completed only basic medical training.
- 33 In that regard, it must be pointed out that Directive 2005/36 is intended to establish a clear separation of the professions of dental practitioner and doctor (see, in so far as Directives 78/686 and 78/687 are concerned, judgment in Case C-202/99 *Commission v Italy* [2001] ECR I-9319, paragraph 51, and order in Case C-35/02 *Vogel* [2003] ECR I-12229, paragraph 33).
- 34 Under Article 36(2) of Directive 2005/36, the profession of dental practitioner is grounded on basic dental training and constitutes a specific profession distinct from that of other general or specialised medical professions. Pursuit of the activities of a dental practitioner requires the possession of evidence of basic formal qualifications referred to in Annex V, point 5.3.2 to Directive 2005/36, which is, as far as the French Republic is concerned, the state diploma of doctor of dental surgery.
- 35 However, the case in the main proceedings does not concern the conditions of access to a profession for the exercise of which Directive 2005/36 requires the completion of a basic dental training course, but the conditions of access to specialised practice in the field of oral surgery.
- 36 As regards specialised training courses, it must be noted that, in the light of Articles 25(1) and 35(1) of Directive 2005/36, admission to specialist medical training and to specialist dental training is contingent upon the completion and validation of study within the framework of the basic medical training course and the basic dentistry training course, respectively.
- 37 If the special training course created by a Member State corresponds, by its title, to a listed specialisation, in respect of that Member State, in Annex V, points 5.1.3. or 5.3.3., to Directive 2005/36 in the domain of medicine or dentistry, persons not in possession of evidence of basic medical training or evidence of basic dental training, respectively, or again, where provided for in the Annex, both, may not be admitted to such a training course.
- 38 However, if a Member State creates a specialised training course which does not correspond, by its title, to a specialisation listed in Annex V to Directive 2005/36 and does not confer entitlement to the award of a title listed in that annex, that specialisation is not a training course within the meaning of Articles 25 and 35 of that directive and, with the result that, that directive does not govern the conditions for access or the content of the training course thus created.

- 39 In those circumstances, Directive 2005/36 does not preclude a specialised training course, the title of which does not correspond to those listed in Annex V, from being open both to persons who have completed only a basic medical training course and to those who have completed and validated only studies in the context of a basic dentistry training course.
- 40 However, in the light of Directive 2005/36, such a specialised training course, which is not covered by Annex V, cannot, in so far as it does not fulfil the requirements laid down in Article 24 or 34 of that directive concerning basic medical or dentistry training, lead to the issuing of evidence of basic medical training or evidence of basic dental training.
- 41 Directive 2005/36 precludes a person who does not possess evidence of basic medical training from practising the profession of medical practitioner and a person who does not possess evidence of basic dentistry training from practising the profession of dental practitioner, respectively.
- 42 As regards the titles of the specialised training courses in medicine and in dentistry, it must be noted that, in the case of the French Republic, no title is included in Annex V to Directive 2005/36 in respect of either the specialised training course in dental, oral and maxillo-facial surgery (basic medical and dental training) or the training course in oral surgery. The titles of 'chirurgie maxillo-faciale et stomatologie' (maxillo-facial surgery and stomatology) and 'stomatologie' (stomatology) as courses in specialised medicine, are, however, referred to by that annex in relation to that Member State.
- 43 It is apparent that the specialisation in 'oral surgery', such as that at issue in the main proceedings, does not correspond, by its title, to those listed, as regards the French Republic, in Annex V to Directive 2005/36.
- 44 In the light of those considerations, the answer to the first question is that Directive 2005/36 must be interpreted as not precluding the creation, by a Member State, of a specialised training course, either in the field of medicine or that of dentistry, the title of which does not correspond to those listed, in respect of that Member State, in Annex V to that directive. Such a specialised course may be open both to persons who have completed only a basic medical training course and to those who have completed and validated studies only in the context of a basic dental training course.
- 45 It is for the national court to ascertain:
- whether that specialised training course, in so far as it does not fulfil the requirements laid down by Articles 23 and 24 of the directive regarding basic medical and dental training, does not lead to the issuing of evidence of basic medical training or evidence of basic dental training, and
 - whether the qualification awarded following the completion of that specialised training course does not authorise the practice of the core profession of medical or dental practitioner by persons who do not possess evidence of formal qualifications in basic medical training or evidence of formal qualifications in dentistry.

The second question

- 46 By its second question, the referring court asks, in essence, whether Directive 2005/36 must be interpreted as precluding the subjects falling within the medical field from forming part of a specialised training course such as that at issue in the main proceedings.
- 47 It is apparent from the examination of the first question that Directive 2005/36 does not prescribe a specific content for a specialised training course, such as that at issue in the main proceedings.

- 48 In any event, even though, under that directive, the profession of dental practitioner constitutes, as was pointed out in paragraph 34 of the present judgment, a specific profession distinct from other general or specialised medical professions, the fact remains that the training programme leading to evidence of basic formal qualifications in dentistry, specified in point 5.3.1. of Annex V to Directive 2005/36, does not only include subjects directly related to dentistry, but also medico-biological subjects and general medical subjects.
- 49 It is apparent that the European Union legislature did not seek to exclude medical subjects from the general or specialised dentistry training courses.
- 50 In those circumstances, the answer to the second question is that Directive 2005/36 must be interpreted as not precluding medical subjects from forming part of a specialised training course in dentistry.

Costs

- 51 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. (a) **Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008, must be interpreted as not precluding the creation, by a Member State, of a specialised training course, either in the field of medicine or that of dentistry, the title of which does not correspond to those listed, in respect of that Member State, in Annex V to that directive. Such a specialised course may be open both to persons who have completed only a basic medical training course and to those who have completed and validated only studies in the context of a basic dental training course.**
- (b) **It is for the national court to verify:**
 - whether that specialised training course, in so far as it does not fulfil the requirements laid down by Articles 23 and 24 of the directive regarding basic medical and dental training, does not lead to the issuing of evidence of basic medical training or evidence of basic dental training, and
 - whether the qualification awarded following the completion of that specialised training course does not authorise the practice of the core medical or dental profession by persons who do not possess evidence of formal qualifications in basic medical training or evidence of formal qualifications in basic dental training.
2. **Directive 2005/36, as amended by Regulation No 1137/2008, must be interpreted as not precluding medical subjects from forming part of a specialised training course in dentistry.**

[Signatures]