



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

30 April 2014*

(Reference for a preliminary ruling — Directive 2005/36/EC — Articles 21 and 49 — Recognition of professional qualifications — Access to the profession of architect — Exemption from professional traineeship)

In Case C-365/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Belgium), made by decision of 20 June 2013, received at the Court on 1 July 2013, in the proceedings

Ordre des architectes

v

État belge,

THE COURT (Ninth Chamber),

composed of M. Safjan, President of the Chamber, J. Malenovský and K. Jürimäe (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Ordre des architectes, by J. van Ypersele, avocat,
- the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,
- the French Government, by D. Colas and F. Gloaguen, acting as Agents,
- the European Commission, by J. Hottiaux and H. Støvlbæk, acting as Agents,

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

* Language of the case: French.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 21 and 49 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, and corrigendum OJ 2008 L 93, p. 28), as amended by Commission Regulation (EC) No 279/2009 of 6 April 2009 (OJ 2009 L 93, p. 11) ('Directive 2005/36').
- 2 The request has been made in proceedings between the Ordre des architectes (Belgian Architects' Association) and the Belgian State concerning the exemption from the traineeship for architects, provided for under Belgian law for nationals of Member States other than the Kingdom of Belgium.

Legal context

EU law

- 3 Directive 2005/36 repealed Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15).
- 4 Recital 19 in the preamble to Directive 2005/36 states:

'Freedom of movement and the mutual recognition of the evidence of formal qualifications of ... architects should be based on the fundamental principle of automatic recognition of the evidence of formal qualifications on the basis of coordinated minimum conditions for training. ... This system should be supplemented by a number of acquired rights from which qualified professionals benefit under certain conditions.'
- 5 Article 1 of that directive, entitled 'Purpose', states:

'This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.'
- 6 Article 4(1) of Directive 2005/36 provides:

'The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.'
- 7 Paragraphs 1 and 5 of Article 21 of the directive, entitled 'Principle of automatic recognition', provide:

'1. Each Member State shall recognise evidence of formal qualifications ... as architect, listed in [Annex V, point 5.7.1], which satisfy the minimum training conditions referred to in [Article 46], 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.'

Such evidence of formal qualifications must be issued by the competent bodies in the Member States and accompanied, where appropriate, by the certificates listed in [Annex V, point 5.7.1].

The provisions of the first and second subparagraphs do not affect the acquired rights referred to [in Article 49 in particular].

...

5. Evidence of formal qualifications as an architect referred to in Annex V, point 5.7.1, which is subject to automatic recognition pursuant to paragraph 1, proves completion of a course of training which began not earlier than during the academic reference year referred to in that Annex.'

- 8 Paragraph 1 of Article 46 of Directive 2005/36, entitled 'Training of architects', states:

'Training as an architect shall comprise a total of at least four years of full-time study or six years of study, at least three years of which on a full-time basis, at a university or comparable teaching institution. The training must lead to successful completion of a university-level examination.

That training, which must be of university level, and of which architecture is the principal component, must maintain a balance between theoretical and practical aspects of architectural training and guarantee the acquisition of the following knowledge and skills:

...'

- 9 Article 49 of that directive, entitled 'Acquired rights specific to architects', provides:

'1. Each Member State shall accept evidence of formal qualifications as an architect listed in Annex VI, awarded by the other Member States, and attesting a course of training which began no later than the reference academic year referred to in that Annex, even if they do not satisfy the minimum requirements laid down in Article 46, and shall, for the purposes of access to and pursuit of the professional activities of an architect, give such evidence the same effect on its territory as evidence of formal qualifications as an architect which it itself issues.

...

2. Without prejudice to paragraph 1, every Member State shall recognise the following evidence of formal qualifications and shall, for the purposes of access to and pursuit of the professional activities of an architect performed, give them the same effect on its territory as evidence of formal qualifications which it itself issues: certificates issued to nationals of Member States by the Member States which have enacted rules governing the access to and pursuit of the activities of an architect ...

...

The certificates referred to in the first subparagraph shall certify that the holder was authorised ... to use the professional title of architect, and that he has been effectively engaged, in the context of those rules, in the activities in question for at least three consecutive years during the five years preceding the award of the certificate.'

Belgian law

- 10 Article 1 of the Law of 20 February 1939 on the protection of the title and profession of architect (loi du 20 février 1939 sur la protection du titre et de la profession d'architecte; *Moniteur belge* of 25 March 1939, p. 1942), as amended by the Law of 21 November 2008 transposing Directives

2005/36/EC and 2006/100/EC and amending the Laws of 20 February 1939 on the protection of the title and profession of architect and of 26 June 1963 creating the Ordre des architectes (loi du 21 novembre 2008 transposant les directives 2005/36/CE et 2006/100/CE et modifiant les lois des 20 février 1939 sur la protection du titre et de la profession d'architecte et 26 juin 1963 créant un Ordre des architectes; *Moniteur belge* of 11 February 2009, p. 11596) ('the Law of 20 February 1939'), provides:

§ 1. No one may use the title of architect ... unless he holds a diploma establishing that he has successfully completed the examinations required to obtain that diploma.

§ 2. Without prejudice to paragraphs 1 and 4 and Articles 7 and 12 of this Law, Belgian citizens and nationals of other Member States of the European Community, or of another State which is a party to the Agreement on the European Economic Area [of 2 May 1992 (OJ 1994 L 1, p. 3; "the EEA Agreement")], may use the title of architect in Belgium if they hold a diploma, certificate or other evidence of formal qualifications referred to in Annex 1(b) to this Law, as amended by the updates published in the *Official Journal of the European Union*, in accordance with the second subparagraph of Article 21(7) of [Directive 2005/36]. Those updates shall be published in their entirety, in the form of an official notice in the *Moniteur belge*.

§ 2/1. The Belgian State shall recognise the evidence of formal qualifications as an architect listed in Annex 2(a) issued by the other Member States, and attesting a course of training which began no later than the reference academic year referred to in that Annex, even if that evidence does not satisfy the minimum requirements laid down in Annex 1(a). The Belgian State shall, for the purposes of access to and pursuit of the professional activities of an architect, give such evidence the same effect on its territory as evidence of formal qualifications as an architect which it itself issues.

...

§ 2/2. Without prejudice to paragraph 2/1, the Belgian State shall recognise certificates issued to nationals of Member States by the Member States which have enacted rules governing the access to and pursuit of the activities of an architect as of the following dates:

...

The certificates referred to in the first subparagraph [of paragraph 2/2] shall certify that the holder was authorised, no later than the respective date, to use the professional title of architect, and that he has actually been engaged, in the context of those rules, in the activities in question for at least three consecutive years during the five years preceding the award of the certificate.

...'

- 11 The first paragraph of Article 50 of the Law of 26 June 1963 creating the Ordre des architectes (loi du 26 juin 1963 créant un Ordre des architectes; *Moniteur belge* of 5 July 1963, p. 6945), as amended by the Law of 22 December 2009 adapting certain legislation to Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (loi du 22 décembre 2009 adaptant certaines législations à la directive 2006/123/CE du Parlement européen et du Conseil relative aux services dans le marché intérieur; *Moniteur belge* of 29 December 2009, p. 82151) ('the Law of 26 June 1963'), provides:

'No one may request entry in a register of the Ordre unless he has completed a traineeship of two years with a person who has been on the register for at least ten years.'

12 Article 52(a) of the Law of 26 June 1963 is worded as follows:

‘The Councils of the Ordre shall exempt from all or part of the traineeship, under the conditions specified by the King:

(a) nationals of the Member States of the European Economic Community or of another State party to [the EEA Agreement] who have carried out abroad duties and services deemed to be equivalent to the traineeship.’

13 Article 1 of the Royal Decree of 23 March 2011 on exemption from the traineeship for architects (arrêté royal du 23 mars 2011 relatif à la dispense du stage d’architecte; *Moniteur belge* of 11 April 2011, p. 23207, ‘the Royal Decree of 23 March 2011’) provides:

‘The Councils of the Ordre des architectes shall exempt from the traineeship referred to in Article 50 of the Law of 26 June 1963 creating the Ordre des architectes nationaux of the Member States of the European Economic Community or of another State party to [the EEA Agreement] who hold a diploma, certificate or other evidence of formal qualifications listed in paragraph 2/2 of Article 1 of the Law of 20 February 1939 on the protection of the title and profession of architect, and in Annexes 1(b) and 2(a) and (b) thereto.

The first subparagraph shall not apply to diplomas, certificates or other evidence of formal qualifications issued by a Belgian body listed in Annexes 1(b) and 2(a) to the abovementioned Law of 20 February 1939.’

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

14 This request for a preliminary ruling has arisen in the context of an action for annulment of the Royal Decree of 23 March 2011 brought by the Ordre des architectes before the Conseil d’État (Belgian Council of State) by application of 25 May 2011.

15 In support of that action, the Ordre des architectes alleges infringement of Articles 50 and 52(a) of the Law of 26 June 1963. According to the Ordre des architectes, the Royal Decree exempts from the mandatory traineeship any national of a State party to the EEA Agreement, or of a Member State other than the Kingdom of Belgium, who is in possession of a diploma, certificate or other evidence of formal qualifications as referred to in paragraph 2/2 of Article 1 of the Law of 20 February 1939 and in Annexes 1(b) and 2(a) and (b) thereto, but does not make that exemption conditional on compliance with conditions that would make it possible to verify that the person has carried out abroad duties and services deemed to be equivalent to the traineeship. The Royal Decree thus provides for a general exemption mechanism on the basis of the qualifications that it lists without making that exemption conditional on whether the home Member State admits those who hold such qualifications to the profession of architect. Furthermore, the Ordre des architectes submits that Annexes V and VI to Directive 2005/36 have not been transposed correctly into Belgian law, that is to say, into Annexes 1(b) and 2(a) to the Law of 20 February 1939. As a consequence, it is possible for a person with an architect’s diploma, but not the additional certificate giving him access to the profession in his home Member State, to gain access to the architectural profession in Belgium, without the Ordre des architectes being able to impose a traineeship requirement on him because of the exemption provided for under the Royal Decree of 23 March 2011.

16 The referring court points out in this regard that the reference made in the Royal Decree of 23 March 2011 to the evidence of formal qualifications set out in Annexes 1(b) and 2(a) to the Law of 20 February 1939 does not guarantee the existence of a minimum of professional experience, since those annexes list evidence of formal qualifications without requiring that evidence to be accompanied by a certificate attesting to the fact that the person has actually performed the activities of an architect.

The referring court infers from this that it does not follow from that Royal Decree that holders of the qualifications to which the decree refers are exempted from the traineeship only if they are fully qualified professionals. Therefore, according to the referring court, the Royal Decree infringes the first subparagraph of Article 52 of the Law of 26 June 1963, which permits the exemption to be granted only to relevant nationals who, outside Belgian territory, have carried out duties and services deemed to be equivalent to the traineeship — a fact that cannot be established merely from possession of evidence of formal qualifications. The referring court considers it appropriate, nevertheless, to examine whether the first subparagraph of Article 52 of the Law of 26 June 1963 is compatible with Articles 21(1) and 49 of Directive 2005/36.

- 17 In those circumstances, the Conseil d'État decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In so far as Articles 21 and 49 of [Directive 2005/36] oblige each Member State, for the purposes of access to and pursuit of professional activities, to give the same effect on its territory to the evidence of formal qualifications to which those provisions refer as to the evidence of formal qualifications which that State itself issues, must those provisions be interpreted as precluding a State from requiring that, in order to be entered in a register of the Ordre des architectes, the holder of evidence of formal qualifications as an architect in accordance with Article 46 of that directive or the holder of evidence of formal qualifications as referred to in Article 49(1) thereof must also satisfy conditions concerning a professional traineeship or experience, equivalent to those required of the holders of diplomas issued on its territory after they have obtained those diplomas?'

Consideration of the question referred

- 18 By its question, the referring court asks, in essence, whether Articles 21 and 49 of Directive 2005/36, in the version applicable to the dispute before the referring court, must be interpreted as precluding the host Member State from requiring the holder of a professional qualification obtained in the home Member State to undertake a traineeship, or to prove that he possesses equivalent professional experience, in order to be authorised to practise the profession of architect.
- 19 Directive 2005/36 provides for the mutual recognition of professional qualifications as regards access to a certain number of regulated professions. Under Articles 1 and 4(1) of that directive, the fundamental purpose of mutual recognition is to allow the holder of a professional qualification giving access to a regulated profession in the holder's home Member State to gain access, in the host Member State, to the same profession as that for which he is qualified in the home Member State, and to practise that profession in the host Member State under the same conditions as its own nationals.
- 20 So far as concerns the profession of architect, amongst others, Directive 2005/36 provides — as is apparent from recital 19 in the preamble thereto — for a system of automatic recognition of the evidence of formal qualifications based on coordinated minimum conditions for training.
- 21 Under the case-law relating to Directive 85/384, which was repealed by Directive 2005/36, such a system of mutual recognition of the evidence of formal qualifications precludes the host Member State from imposing additional requirements for the recognition of professional qualifications which satisfy the conditions for qualification laid down by the EU rules (see, to that effect, Case C-43/06 *Commission v Portugal* EU:C:2007:300, paragraphs 27 and 28, and Case C-111/12 *Ordine degli Ingegneri di Verona e Provincia and Others* EU:C:2013:100, paragraphs 43 and 44).
- 22 That consideration also applies as regards Directive 2005/36. In the first place, the language of that directive is unambiguous. Thus, as regards access to the profession of architect, the first subparagraph of Article 21(1) of Directive 2005/36 provides that the Member States are to recognise evidence of formal qualifications as listed in point 5.7.1 of Annex V to that directive and, for the purposes of

access to the profession of architect, are to give such evidence the same effect as the evidence of formal qualifications which they themselves issue. In accordance with the second subparagraph of Article 21(1) of Directive 2005/36, such evidence must be issued by competent bodies and accompanied, where appropriate, by additional certificates. Point 5.7.1 of Annex V to Directive 2005/36 lists, for each Member State, the evidence of formal qualifications required, the bodies empowered to award that evidence and the additional certificates required in order to obtain access to the profession of architect. That evidence and those certificates satisfy the minimum conditions, described in Article 46 of the directive, for training as an architect.

- 23 Article 21(1) of Directive 2005/36 is supplemented by Article 49 of that directive. Under Article 49(1) of Directive 2005/36, Member States are to accept evidence of formal qualifications, as listed in Annex VI to the directive, that have been awarded at the end of a course of training started no later than the reference academic year referred to in that annex, even if those qualifications do not satisfy the minimum requirements laid down in Article 46 of the directive. As regards access to the profession of architect, the Member States are required to give such evidence the same effect as evidence which they themselves issue.
- 24 It follows that the system of automatic recognition of professional qualifications provided for, as regards the profession of architect, in Articles 21, 46 and 49 of Directive 2005/36 leaves the Member States no discretion. Accordingly, where a national of a Member State holds any of the formal qualifications and certificates set out in point 5.7.1 of Annex V or in Annex VI to that directive, he must be permitted to practise the profession of architect in another Member State, without the latter being able to require him to obtain additional professional qualifications or to prove that he has done so.
- 25 In the second place, the preclusion of any additional requirements, which is clear from paragraph 21 above, is all the more necessary, as regards Directive 2005/36, as it strengthens the automatic nature of the recognition of professional qualifications, so far as concerns the profession of architect, as compared with Directive 85/384. Under Article 23(1) of Directive 85/384, a Member State had the right to impose additional conditions as to practical training experience on holders of evidence of formal qualifications awarded by another Member State even though those qualifications received mutual recognition. Directive 2005/36 abolished that right without amending — in terms of changing the basic principle — the provisions relating to mutual recognition, those being the very provisions at issue in the case-law referred to in paragraph 21 above.
- 26 However, it must be stated that, whilst the principles governing the system for the automatic mutual recognition of professional qualifications for architects, provided for in Directive 2005/36, are set out in Articles 21, 46 and 49 of that directive, the implementation of that system is based — as is apparent from paragraphs 22 and 23 above — on the content of Annexes V and VI to the directive. The proper working of the system for automatic mutual recognition provided for in Directive 2005/36 therefore presupposes that the Member States have correctly transposed into national law not only Articles 21, 46 and 49 of Directive 2005/36, but also Annexes V and VI thereto.
- 27 In the light of the foregoing considerations, the answer to the question referred is that Articles 21 and 49 of Directive 2005/36 must be interpreted as precluding the host Member State from requiring the holder of a professional qualification obtained in the home Member State and listed in point 5.7.1 of Annex V, or in Annex VI, to that directive to undertake a traineeship, or to prove that he possesses equivalent professional experience, in order to be authorised to practise the profession of architect.

Costs

- 28 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 (Ninth Chamber) hereby rules:

Articles 21 and 49 of 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 Commission Regulation (EC) No 279/2009 of 6 April 2009, must be interpreted as precluding the host Member State from requiring the holder of a professional qualification obtained in the home Member State and listed in point 5.7.1 of Annex V, or in Annex VI, to that directive to undertake a traineeship, or to prove that he possesses equivalent professional experience, in order to be authorised to practise the profession of architect.

[Signatures]