



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

8 July 2021 \*

(Reference for a preliminary ruling – Recognition of professional qualifications – Directive 2005/36/EC – Article 1 and Article 10(b) – Professional qualifications obtained in several Member States – Conditions for obtaining – No formal evidence of qualifications – Articles 45 and 49 TFEU – Workers – Freedom of establishment)

In Case C-166/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 8 April 2020, received at the Court on 22 April 2020, in the proceedings

**BB**

v

**Lietuvos Respublikos sveikatos apsaugos ministerija,**

THE COURT (Sixth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė, acting as Agent,
- the Netherlands Government, by M.K. Bulterman and by J. Langer, acting as Agents,
- the Austrian Government, by A. Posch and by J. Schmoll and E. Samoilova, acting as Agents,
- the Norwegian Government, by I. Meinich and K.S. Borge, acting as Agents,

\* Language of the case: Lithuanian.

– the European Commission, initially by L. Armati and A. Steiblytė and by S.L. Kalėda and H. Støvlbæk, and subsequently by L. Armati and A. Steiblytė and by S.L. Kalėda, 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 Article 1 and Article 10(b) 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 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 (OJ 2013 L 354, p. 132) ('Directive 2005/36'), Articles 45 and 49 TFEU and Article 15 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between BB and the Lietuvos Respublikos sveikatos apsaugos ministerija (Ministry of Health of the Republic of Lithuania) ('the Ministry of Health') concerning the Ministry of Health's refusal to recognise BB's professional qualification.

### Legal context

- 3 The first paragraph of Article 1 of Directive 2005/36, entitled 'Purpose', provides:

'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.'
- 4 Article 4 of the directive, entitled 'Effects of recognition', states:

'1. The recognition of professional qualifications by the host Member State shall allow beneficiaries to gain access in that Member State to the same profession as that for which they are qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.

2. For the purposes of this Directive, the profession which the applicant wishes to pursue in the host Member State is the same as that for which he is qualified in his home Member State if the activities covered are comparable.

...'
- 5 Paragraph 6 of Article 4f of Directive 2005/36, entitled 'Partial access', states that that article is not to apply to professionals benefiting from automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III of that directive.

- 6 Article 10(b) of that directive, entitled ‘Scope’, in Chapter I of Title III of that directive, relating to the ‘General system for the recognition of evidence of training’, states:

‘This Chapter applies to all professions which are not covered by Chapters II and III of this Title and in the following cases in which the applicant, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:

...

- (b) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the migrant does not meet the requirements of effective and lawful professional practice referred to in Articles 23, 27, 33, 37, 39, 43 and 49’.
- 7 In Chapter III of Title III of Directive 2005/36, concerning ‘recognition on the basis of coordination of minimum training conditions’, Article 21 of that directive, entitled ‘Principle of automatic recognition’, provides in the first subparagraph of paragraph 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.’

- 8 Article 23 of that directive, entitled ‘Acquired rights’, provides in paragraph 1:

‘Without prejudice to the acquired rights specific to the professions concerned, in cases where the 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 midwife and as pharmacist held by Member States nationals does not satisfy all the training requirements referred to in Articles 24, 25, 31, 34, 35, 38, 40 and 44, each Member State shall recognise as sufficient proof evidence of formal qualifications issued by those Member States in so far as such evidence attests successful completion of training which began before the reference dates laid down in Annex V, points 5.1.1, 5.1.2, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2 and 5.6.2 and is accompanied by a certificate stating that the holders have been effectively and lawfully engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate.’

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

- 9 BB completed four years of pharmacy studies in the United Kingdom and obtained a master’s degree in pharmacy on 18 July 2013. BB completed 26 weeks (6 months) of traineeship in a pharmacy, for which she obtained a favourable assessment and the relevant credits.

- 10 In the United Kingdom, the right to practise as a pharmacist is obtained following 4 years of study and 12 months of professional traineeship. BB did not complete the 12 months' traineeship required in that Member State to obtain the qualification as a pharmacist, as she had to return to Lithuania for personal reasons.
- 11 On 23 July 2014, the Studijų kokybės vertinimo centras (Centre for Quality Assessment in Higher Education, Lithuania) issued a certificate recognising that BB's diploma was equivalent to a master's degree awarded in Lithuania on completion of an integrated programme of pharmacy studies. That assessment centre stated that that certificate did not constitute recognition of professional qualifications, since such recognition fell within the exclusive competence of the Ministry of Health.
- 12 On 6 August 2014, BB applied to the Ministry for recognition of her qualification. That ministry stated that BB's documents attested to her academic training, but not to her professional qualification, since there was no certainty as to the Member State in which the remaining six months of training should be completed.
- 13 In September 2014, by an order of the Lietuvos sveikatos mokslų universiteto rektorius (Director of the University of Health Sciences in Lithuania), BB was authorised to follow a course of study and concluded an agreement with that university pursuant to which she completed a further six months' practical pharmacy traineeship. On 27 May 2015, that university issued her with a certificate demonstrating completion of that training period.
- 14 BB applied to the Valstybinę vaistų kontrolės tarnyba (State Medicines Control Agency, Lithuania) at the Ministry of Health to grant her a pharmacist's licence. To that end, she relied on the certificate referred to in the preceding paragraph. On 1 June 2015, that agency informed BB that, in order to obtain such a licence, she was required to produce a document demonstrating recognition of her professional qualification in Lithuania. On 9 June 2015, BB repeated her request to the Ministry of Health for recognition of professional qualification, attaching, *inter alia*, the certificate referred to in paragraph 13 of the present judgment.
- 15 On 3 July 2015, that agency concluded its examination of BB's application, without granting the pharmacist licence applied for.
- 16 By Order No V-902 of 24 July 2017, the Ministry of Health refused to recognise BB's professional qualification and informed BB of that refusal by letter dated 28 July 2017. That order states that BB had not obtained professional qualification as a pharmacist in a Member State of the European Union.
- 17 BB challenged that order before the Board of Appeal, which, by decision of 13 September 2017, upheld such order. The Board of Appeal based its decision on the fact that Directive 2005/36 and, consequently, the national law transposing that directive, are applicable only to persons who have obtained a professional qualification in a Member State other than the host Member State and who have formal evidence of qualifications.
- 18 BB challenged the decisions of the Ministry of Health and the Board of Appeal before the Vilniaus apygardos administracinis teismas (Regional Administrative Court of Vilnius, Lithuania). By judgment of 27 February 2018, that court dismissed BB's action as unfounded.

- 19 An appeal against that judgment was brought before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania).
- 20 According to the referring court, BB satisfied the legal requirements in the United Kingdom for obtaining the professional qualification as a pharmacist, namely to have completed a professional training course of 4 years' duration and to have completed 12 months' practical traineeship in a pharmacy, namely 6 months in the United Kingdom and 6 months in Lithuania. Accordingly, if BB had satisfied all those conditions in a single Member State, namely the United Kingdom, BB would have obtained formal evidence of qualification as a pharmacist which, under the principle of automatic recognition enshrined in Article 21 of Directive 2005/36, would have been recognised in Lithuania.
- 21 Given that BB could not rely on the system of automatic recognition laid down in Article 21 of Directive 2005/36, when, in essence, she satisfies the conditions for professional qualification laid down in Article 44 of that directive, it is necessary to determine whether Article 10(b) of that directive must be interpreted as applying where the person concerned has not obtained formal evidence of qualification as a pharmacist when he or she has, in practice, satisfied the conditions required to obtain that professional qualification, in not one but several Member States, one of which is the host Member State. The referring court is of the view that it is also necessary to determine whether, in that case, the provisions of Chapter I of Title III of Directive 2005/36 must be interpreted as meaning that the authorities competent for the recognition of qualifications are obliged to assess the content of all the documents submitted by the person concerned which can demonstrate his or her professional qualifications, and whether they comply with the requirements set in the host Member State for obtaining the professional qualifications concerned and, if necessary, to apply compensation measures.
- 22 Since the general system for recognition laid down by Directive 2005/36 applies only in certain cases, the referring court asks, in addition, whether BB can claim recognition of her professional qualification by relying on Articles 45 and 49 TFEU and Article 15 of the Charter.
- 23 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Should Article 10(b) of Directive 2005/36/EC, when interpreted together with the purpose of the directive specified in Article 1, be interpreted as being applicable in a situation where a person has not obtained formal evidence of qualifications because he or she has potentially fulfilled the requirements necessary for obtaining the professional qualifications in several Member States of the European Union rather than in a single one? In such a situation, where a person has not acquired formal evidence of qualifications because he or she has potentially fulfilled the requirements necessary for obtaining the professional qualifications in several Member States of the European Union rather than in a single one, should Chapter I (General system for the recognition of evidence of training) of Title III of Directive 2005/36/EC be interpreted as obliging the institution recognising qualifications to assess the content of all the documents submitted by the person which can demonstrate professional qualifications and whether they comply with the requirements set in the host Member State for obtaining the professional qualifications and, if necessary, to apply compensation measures?

- (2) In a situation such as that in the present case, where the applicant has potentially fulfilled the requirements necessary for obtaining the professional qualifications as a pharmacist for the purposes of Article 44 in Section 7 of Chapter III of Directive 2005/36/EC but those requirements have been fulfilled in several Member States of the European Union rather than in a single one and, therefore, the applicant does not hold the evidence attesting to professional qualifications that is laid down in point 5.6.2 of Annex V to Directive 2005/36/EC, should Articles 45 and 49 TFEU and Article 15 of the Charter to be interpreted as obliging the competent authorities of the host Member State to assess the professional training of the applicant and to compare it with the professional training required in the host State, and also to assess the content of the documents submitted which can demonstrate professional qualifications and whether they comply with the requirements set in the host Member State for obtaining the professional qualifications, and, if necessary, to apply compensation measures?

### **The first question**

- 24 By its first question, the referring court asks, in essence, whether Directive 2005/36, in particular Article 1 and Article 10(b) thereof, must be interpreted as applying to a situation in which a person applying for recognition of his or her professional qualifications in the host Member State has not obtained formal evidence of qualifications in another Member State and, if so, whether the provisions of Chapter I of Title III of that directive must be interpreted as meaning that the authority competent for the recognition of professional qualifications is obliged to assess the content of all the documents submitted by the person concerned attesting to his or her professional qualifications which were obtained in several Member States, and whether they comply with the requirements set in the host Member State for obtaining the professional qualifications concerned and, if necessary, to apply compensation measures.
- 25 In that regard, it must be noted that, as regards the purpose of Directive 2005/36, it is clear from Articles 1 and 4 thereof that 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 or she 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 (judgment of 16 April 2015, *Angerer*, C-477/13, EU:C:2015:239, paragraph 36).
- 26 Therefore, the mutual recognition of professional qualifications referred to in that directive presupposes that the applicant has training which qualifies him or her in the home Member State to pursue a regulated profession there.
- 27 That is the case irrespective of the type of system for recognition of professional qualifications, be it the general system for recognition provided for in Chapter I of Title III of Directive 2005/36, or the automatic system for recognition provided for in Chapters II, III and IIIa of Title III of that directive.
- 28 It follows that Article 10 of Directive 2005/36, which defines the scope of the general system for the recognition of evidence of training laid down in Chapter I of Title III of that directive, cannot, by virtue of point (b) thereof, require the host Member State, without contravening the objective of that directive, to examine the evidence of formal qualifications held by an applicant

who does not have the qualifications necessary to practise as a pharmacist in his or her home Member State (see, by analogy, judgment of 16 April 2015, *Angerer*, C-477/13, EU:C:2015:239, paragraphs 24 and 37).

- 29 In the light of all the foregoing, the answer to the first question is that Directive 2005/36, in particular Article 1 and Article 10(b) thereof, must be interpreted as not applying to a situation in which a person seeking recognition of his or her professional qualifications has not obtained formal evidence of qualifications which qualify him or her in the home Member State to pursue a regulated profession there.

### **The second question**

- 30 By its second question, the referring court asks, in essence, whether Articles 45 and 49 TFEU and Article 15 of the Charter must be interpreted as meaning that, in a situation in which the person concerned does not have the formal qualification attesting to his or her professional qualification as a pharmacist, as referred to in point 5.6.2 of Annex V to Directive 2005/36, but has acquired professional competences relating to that profession both in the home Member State and in the host Member State, the competent authorities of the host Member State are obliged, when they are dealing with an application for recognition of professional qualifications, to assess those competences and to compare them with the competences required in the host Member State in order to practice as a pharmacist.
- 31 As a preliminary point, it should be recalled that Article 15(2) of the Charter, under which every citizen of the European Union has the freedom to seek employment, to work and to exercise the right of establishment in any Member State, deals with, inter alia, the freedom of movement for workers guaranteed by Article 45 TFEU and the freedom of establishment guaranteed by Article 49 TFEU (judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 53).
- 32 According to Article 52(2) of the Charter, rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. Therefore, the interpretation of Article 15(2) of the Charter corresponds, in the present case, with the interpretation of Articles 45 and 49 TFEU (see, to that effect, judgment of 4 July 2013, *Gardella*, C-233/12, EU:C:2013:449, paragraph 39).
- 33 It follows that it is sufficient to refer to Articles 45 and 49 TFEU in order to answer the second question.
- 34 It is also important to bear in mind that the authorities of a Member State to which an application has been made by an EU national for authorisation to practice a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, are required to take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned and his or her relevant experience, by comparing the specialised knowledge and abilities so certified, and that experience, with the knowledge and qualifications required by the national legislation (judgment of 22 January 2002, *Dreessen*, C-31/00, EU:C:2002:35, paragraph 24 and the case-law cited).

- 35 Since that case-law is merely the expression in judicial decisions of a principle inherent in the fundamental freedoms of the TFEU, the legal effect of that principle cannot be reduced as a result of the adoption of directives on mutual recognition of diplomas (see, to that effect, judgment of 22 January 2002, *Dreessen*, C-31/00, EU:C:2002:35, paragraph 25).
- 36 The object of such directives is, as is apparent from Article 53(1) TFEU, to facilitate the mutual recognition of diplomas, certificates and other evidence of formal qualifications by laying down rules and common criteria which result, as far as possible, in automatic recognition of those diplomas, certificates and other evidence of formal qualifications. It is not the purpose of those directives to make recognition of such diplomas, certificates and other evidence of formal qualifications more difficult in situations falling outside their scope, nor may they have such an effect (see, to that effect, judgment of 22 January 2002, *Dreessen*, C-31/00, EU:C:2002:35, paragraph 26).
- 37 Those considerations apply in particular to Directive 2005/36, which was adopted on the basis, in particular, of Article 47(1) EC (now Article 53(1) TFEU).
- 38 In a situation such as that in the present case, which, as is apparent from the answer to the first question, does not fall within the scope of Directive 2005/36, the host Member State concerned must comply with its obligations regarding recognition of professional qualifications, as recalled in paragraph 34 of the present judgment, which apply to situations falling within the scope of both Article 45 TFEU and Article 49 TFEU (see, to that effect, judgments of 14 September 2000, *Hocsman*, C-238/98, EU:C:2000:440, paragraph 21, and of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraphs 46 and 54).
- 39 Accordingly, where the comparative examination of qualifications results in the finding that the knowledge and qualifications attested to by the foreign qualification correspond to those required by the national provisions, the host Member State must recognise that qualification as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications attested to by the foreign qualification and those required by the national provisions correspond only partially, that Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking (judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 57 and the case-law cited).
- 40 In that regard, it is for the competent national authorities to assess whether the knowledge acquired in the host Member State, by way of, inter alia, practical experience, is sufficient in order to prove possession of the knowledge which is lacking (judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 58 and the case-law cited).
- 41 By contrast, if that comparative examination reveals substantial differences between the training undertaken by the applicant and the training required in the host Member State, the competent authorities may set compensatory measures to remedy those differences (see, in particular, judgment of 2 December 2010, *Vandorou and Others*, C-422/09, C-425/09 and C-426/09, EU:C:2010:732, paragraph 72).
- 42 In the light of all the foregoing, the answer to the second question is that Articles 45 and 49 TFEU must be interpreted as meaning that, in a situation in which the person concerned does not hold the formal qualification attesting to his or her professional qualification as a pharmacist, within the meaning of point 5.6.2 of Annex V to Directive 2005/36, but has acquired professional



competences relating to that profession both in the home Member State and in the host Member State, the competent authorities of the host Member State are obliged, when they are requested to examine an application for recognition of professional qualifications, to assess those competences and to compare them with the competences required in the host Member State in order to practice as a pharmacist. If those competences correspond to those required by the national provisions of the host Member State, the host Member State must recognise them. If that comparative examination reveals that those competences correspond only partially, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. It is for the competent national authorities to assess, as necessary, whether the knowledge acquired in the host Member State, by way of, inter alia, practical experience, is sufficient to demonstrate acquisition of the knowledge which is lacking. If that comparative examination reveals substantial differences between the training undertaken by the applicant and the training required in the host Member State, the competent authorities may set compensatory measures to remedy those differences.

### Costs

- 43 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 (Sixth Chamber) hereby rules:

- 1. Directive 2005/36 of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, in particular Article 1 and Article 10(b) thereof, must be interpreted as not applying to a situation in which a person seeking recognition of his or her professional qualifications has not obtained formal evidence of qualifications which qualify him or her in the home Member State to pursue a regulated profession there.**
- 2. Articles 45 and 49 TFEU must be interpreted as meaning that, in a situation in which the person concerned does not have the formal qualification attesting to his or her professional qualification as a pharmacist, within the meaning of point 5.6.2 of Annex V to Directive 2005/36, as amended by Directive 2013/55, but has acquired professional competences relating to that profession both in the home Member State and in the host Member State, the competent authorities of the host Member State are obliged, when they are requested to examine an application for recognition of professional qualifications, to assess those competences and to compare them with the competences required in the host Member State in order to practice as a pharmacist. If those competences correspond to those required by the national provisions of the host Member State, the host Member State must recognise them. If that comparative examination reveals that those competences correspond only partially, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. It is for the competent national authorities to assess, as necessary, whether the knowledge acquired in the host Member State, by way of, inter alia, practical experience, is sufficient to demonstrate acquisition of the knowledge which is lacking. If that comparative examination reveals substantial**

**differences between the training undertaken by the applicant and the training required in the host Member State, the competent authorities may set compensatory measures to remedy those differences.**

[Signatures]