



Refusal of recognition of a qualification as masseur-hydrotherapist which enables an autonomous profession to be exercised in the Member State which issued it constitutes an obstacle to the freedom of establishment not justified by consumer protection or protection of public health

As regards the profession of physiotherapist, consumer protection could, for example, be ensured by the obligation to use the professional title of origin in the language of the Member State where the training took place and in the language of the host Member State.

Mr Nasiopoulos, a Greek national, obtained, in Germany, after a training period of two and a half years, a qualification entitling him to exercise the profession of *medical masseur-hydrotherapist* ('Masseur und medizinischer Bademeister').

That profession is not regulated in Greece. The nearest profession is that of physiotherapist, for which the minimum training is three years. For that reason, the Greek Ministry of Health rejected the application made by Mr Nasiopoulos for access in that State to the profession of *physiotherapist*.

The Simvoulio tis Epikratias (Council of State, Greece) asks the Court of Justice whether the principle of freedom of establishment allows national legislation which excludes partial access to the profession of physiotherapist to be granted to a national of a Member State who has obtained, in another Member State, a qualification, such as that of masseur-hydrotherapist, which authorises him to carry out, in that second Member State, some of the activities coming under the profession of physiotherapist.

In its judgment delivered today, the Court recalls that freedom of establishment is to be exercised on the conditions defined by the host country for its own nationals. Since the conditions for access to the profession of physiotherapist have not, to date, been harmonised at EU level, the Member States remain competent to define the conditions for access, while respecting the basic freedoms guaranteed by the Treaty.

The Court considers that the exclusion of any partial access to a regulated profession is liable to hinder or make less attractive the exercise of freedom of establishment and may be justified only by overriding reasons relating to the public interest, for example, consumer protection and health protection, without going beyond what is necessary to achieve those objectives.

Consumers must be protected from the risk that they will be misled as to the scope of the qualifications associated with the profession of physiotherapist. To that end, less restrictive means than the exclusion from partial access to the profession could be applied: for example, **the obligation to use the professional title of origin both in the language in which it was awarded and in its original form, and in the official language of the host Member State**¹.

Moreover, the protection of **public health** does indeed require a particular vigilance. Nonetheless, the profession of physiotherapist and that of masseur fall within the paramedical sector and the

¹ The Court recalls its earlier case-law, in particular Case [C-330/03](#) *Colegio de Ingenieros de Caminos, Canales y Puertos*.

provision of the services consists merely of the implementation of a therapy prescribed, as a general rule, by a doctor who chooses the masseur-hydrotherapist and acts in close liaison with him, each depending on and cooperating with the other.

The Court concludes therefrom that **exclusion from partial access to the profession of physiotherapist goes beyond what is necessary for consumer protection and protection of public health.**

The Court states that where, in the Member State of origin and the host Member State, the two professions may be regarded as comparable², any shortcomings in the professional's education or training in relation to that required in the host Member State may be made up for through the application of the compensation measures³. However, where the differences between the fields of activity are so great that in reality the professional should follow a full programme of education and training in order to pursue, in another Member State, the activities for which he is qualified, this is a factor which is liable to discourage him from pursuing those activities in the host Member State.

It is for the national authorities and, in particular, the competent courts in the host Member State (in this case Greece) to determine, in each specific case, to what extent the content of the education and training required in that State is different from that obtained in the State where the training was given (in this case Germany).

The Court indicates that one of the decisive issues to be considered at the outset by the national authorities is whether the activity of masseur-hydrotherapist may, objectively, be separated from the rest of the activities covered by the corresponding profession in the host State.

Thus, where, in the State in which the training was given (Germany) the profession of masseur-hydrotherapist may be pursued *independently or autonomously*, the dissuasive effect as regards the freedom of establishment caused by the preclusion of any possibility of partial recognition of that qualification in the host State (Greece) cannot be justified by the fear of potential harm to recipients of services.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Within the meaning 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), replacing the various repealed recognition systems with effect from 20 October 2007.

³ Those defined in Article 14(1) of Directive 2005/36.