

**Case C-166/20****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

22 April 2020

**Referring court:**

Lietuvos vyriausiasis administracinis teismas (Lithuania)

**Date of the decision to refer:**

8 April 2020

**Applicant:**

BB

**Defendant:**

Lietuvos Respublikos sveikatos apsaugos ministerija (Ministry of Health of the Republic of Lithuania)

**Subject matter of the main proceedings**

Dispute concerning the refusal to recognise the applicant as having professional qualifications as a pharmacist, where they have potentially been obtained in several Member States of the European Union.

**Subject matter and legal basis of the request for a preliminary ruling**

The interpretation and application in the present case of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ('Directive 2005/36/EC'), of Articles 45 and 49 of the Treaty on the Functioning of the European Union ('the TFEU'), and of Article 15 of the Charter of Fundamental Rights of the European Union ('the Charter'); third paragraph of Article 267 TFEU.

## Questions referred

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 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?

## Provisions of EU law cited

Articles 45(1) to (3) and 49 TFEU.

Article 15(1) and (2) of the Charter.

Articles 1, 3(1)(c), 10(b), 11, 13, 14, 21, 24 and 44 of and point 5.6.2 of Annex V to Directive 2005/36/EC.

## Provisions of national law cited

Article 1(1) of the Lietuvos Respublikos reglamentuojamų profesinių kvalifikacijų pripažinimo įstatymo (Law of the Republic of Lithuania on the recognition of regulated professional qualifications), in the version in force from 31 January 2014 ('the Law'), provides:

'1. This Law shall establish the principles and mechanisms for the recognition of professional qualifications of nationals of Member States of the European Union ("the EU"), nationals of States of the European Economic Area ("the EEA") and nationals of the Swiss Confederation *obtained* in the EU, EEA and Swiss Confederation, shall establish administrative cooperation, and shall provide guarantees that persons who have obtained professional qualifications *in another Member State* have the same rights as nationals of the Republic of Lithuania to pursue, on either a self-employed or employed basis, a regulated profession in the Republic of Lithuania.'

Point 2 of Article 10 ('Scope of the general system for the recognition of evidence of formal qualifications') of the Law provides:

'The provisions of this Chapter shall apply to all regulated professions with the exception of professions specified in Chapters II and III of Part III of this Law [and] where a person, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:

...

(2) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the person does not meet the requirements of actual and lawful professional practice referred to in Articles 19, 23, 29, 33, 35, 39 and 45 of this Law'.

Order No V-802 of the Minister of Education and Science of the Republic of Lithuania of 23 July 2015, entitled 'Approval of the description of the pharmacy study field' ('Order No V-802'), provides:

'3. Study programmes of the pharmacy study field may be carried out in colleges of higher education as first study cycle professional bachelor studies or in universities as integrated studies.

...

11. The integrated study programme in the pharmacy study field is devoted to studies of the basic field, upon the completion of which the master's degree in the field and the qualification in pharmacy are awarded. The master's degree in the pharmacy study field serves as evidence of

preparedness to carry out pharmacy activities and scientific research and to continue university doctoral studies in a chosen speciality.

...

14. Evidence of formal qualifications as a pharmacist shall attest to the completion of training to be a pharmacist of at least five years' duration, including the following minimum requirements:

14.1. Four years of theoretical and practical training by way of full-time study at a university or equivalent higher education establishment or under the supervision of a university;

14.2. Six months' traineeship in a pharmacy which is open to the public or in a hospital, under the supervision of the person with responsibility for pharmacy activities.'

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 At the University of Huddersfield (United Kingdom), the applicant completed four years of pharmacy studies and, on 18 July 2013, obtained a master's degree in pharmacy; she also carried a six-month traineeship in a pharmacy, which was positively assessed and was credited.
- 2 Obtaining qualifications in pharmacy in the United Kingdom requires academic education, namely four years' study at a university, and a twelve-month professional traineeship in a pharmacy. Due to difficult personal circumstances, the applicant had to return to Lithuania, so she did not complete her period of traineeship at a pharmacy in the United Kingdom.
- 3 On 23 July 2014, the Studijų kokybės vertinimo centras (Centre for Quality Assessment in Higher Education, Lithuania) issued to the applicant a certificate of academic recognition of qualifications and decided to recognise her diploma as equivalent to a master's degree awarded upon the completion of integrated pharmacy studies in the Republic of Lithuania but stated that the certificate did not imply professional recognition of the qualifications because such recognition was granted only by the authorised institution, that is to say, the defendant.
- 4 On 6 August 2014, the applicant applied to the defendant for the professional recognition of her qualifications. The defendant indicated that the applicant's documents proved academic education but not professional qualifications, and that it was not clear where (in Lithuania or the United Kingdom) the remaining six-months' traineeship should be carried out.
- 5 In September 2014, the applicant entered into a study agreement with the Lithuanian University of Health Sciences, on the basis of which she carried out

another six months of pharmacy traineeship, and on 27 May 2015 the university issued a certificate to that effect.

- 6 The applicant applied to the Valstybinė vaistų kontrolės tarnyba (State Medicines Control Agency, Lithuania) for grant of a pharmacist's licence to her and submitted the aforesaid certificate. That agency did not issue a pharmacist's licence on the ground that no document confirming recognition of the professional qualifications in Lithuania had been submitted.
- 7 Having received the applicant's repeated application for the recognition of her professional qualifications, on 24 July 2017 the Ministry of Health, by Order No V-902 entitled 'Recognition of BB's professional qualifications for working as a pharmacist in the Republic of Lithuania' ('Order No V-902'), refused to recognise the applicant's qualifications and informed her thereof by letter of 28 July 2017. Order No V-902 states that the applicant has not obtained professional qualifications as a pharmacist in a Member State of the European Union and, therefore, the qualifications are not recognised. It is stated in the letter that the applicant failed to submit the documents necessary for recognition.
- 8 The defendant also stated in the letter that the competent authority of the United Kingdom informed the defendant that the applicant did not meet the requirements necessary to obtain the professional qualification of pharmacist in the United Kingdom.
- 9 The applicant appealed against Order No V-902, issued by the defendant, to the Board of Appeal, whose decision of 13 September 2017 upheld the order. The reason given by the Board of Appeal for its decision was that Directive 2005/36/EC and the law implementing it apply only to persons who have obtained professional qualifications in another Member State and have formal evidence of the qualifications, whereas the applicant fails to meet those requirements and the compensatory mechanisms provided for by Directive 2005/36/EC cannot be applied to her because they can be applied only to persons who have obtained a professional qualification and whose training differs from that of a regulated profession in the host Member State.
- 10 The applicant appealed against the decisions of the defendant and the Board of Appeal to the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius). The applicant stated that both the defendant, in dealing with the issue of the recognition of professional qualifications, and the Board of Appeal had acted in a formalistic manner, had failed to assess both the content of the documents submitted by her that substantiated her qualifications and the compliance of those documents with the requirements for obtaining professional qualification as a pharmacist in the Republic of Lithuania, and had taken into consideration only the titles of the documents.

- 11 By decision of 27 February 2018, the court of first instance dismissed the applicant's action as unfounded. The applicant appealed against that decision to the referring court.

### **Succinct presentation of the reasons for the request for a preliminary ruling**

#### *Article 10(b) of Directive 2005/36/EC*

- 12 Directive 2005/36/EC essentially regulates cases where persons who have obtained professional qualifications in one Member State of the European Union seek to pursue the professional activity in another Member State. Article 1 of Directive 2005/36/EC also states that such qualifications may be obtained in more than one Member State.
- 13 Pursuant to paragraph 1 of Article 21 ('Principle of automatic recognition') of Directive 2005/36/EC, which is in Section 1 of Chapter III ('Recognition on the basis of coordination of minimum training conditions') of Title III, where a person holds evidence of formal qualifications as a pharmacist that has been obtained in another Member State of the European Union, and satisfies the minimum training conditions referred to in Article 44(2) of Section 7 of that chapter, each Member State is to recognise the qualifications in accordance with the principle of automatic recognition. Article 21(6) of Directive 2005/36/EC establishes conditions to be satisfied in order for a Member State to grant a person the right to have access to and to pursue the professional activities of a pharmacist, that is to say, possession of evidence of formal qualifications referred to in point 5.6.2 of Annex V to Directive 2005/36/EC, attesting that the professional concerned has acquired the knowledge, skills and competences referred to in Articles 24(3) and 44(3).
- 14 Article 10(b) of Directive 2005/36/EC provides that the provisions of Chapter I ('General system for the recognition of evidence of training') of Title III of that directive may also apply to pharmacists who, for specific and exceptional reasons, do not meet the requirements of effective and lawful professional practice referred to in Articles 21 and 44 of Chapter III of Title III.
- 15 According to Article 10(b) of Directive 2005/36/EC, pharmacists who do not meet the professional practice requirement must have basic training.<sup>1</sup> The term 'basic training' is not defined in the directive itself and is therefore not clear. Therefore, the chamber cannot assess whether the applicant in the present case can be considered to have completed basic training. If it could be concluded that the applicant meets this condition and the general system for the recognition of

<sup>1</sup> Translator's note: the referring court is evidently relying on the Lithuanian text of the directive, since it is possible to read the Lithuanian version of Article 10(b) in such a way that the reference in that provision to 'basic training' applies not only to doctors but also, amongst others, to pharmacists.

evidence of training can be applied in her case in general, Article 11 of Directive 2005/36/EC on levels of qualification, Article 13 on the conditions for recognition and Article 14 providing for compensation measures would be relevant. Application of the general system for the recognition of evidence of training would entail additional responsibilities for the institution recognising the qualifications.

- 16 It is common ground that the applicant has not obtained evidence, as defined in point 5.6.2 of Annex V to Directive 2005/36/EC, of formal qualifications as a pharmacist in any of the Member States of the European Union and cannot therefore take advantage of the principle of automatic recognition. However, on the basis of Article 3(1)(c) of Directive 2005/36/EC, professional qualifications may be demonstrated not only by evidence of formal qualifications but also by other documents attesting to competence or by experience. It is apparent from the documents in the case file that the applicant actually fulfilled in several Member States the requirements for obtaining professional qualifications as a pharmacist that are laid down in Article 44 of Directive 2005/36/EC and it is only because of the absence of legal provisions expressly regulating such cases that she was not issued with the aforesaid evidence attesting to professional qualifications as a pharmacist and cannot engage in professional practice.
- 17 In the opinion of the chamber, the applicant has fulfilled the requirements for obtaining the professional qualifications as a pharmacist, that is to say, she has completed the four-year professional training course and a total of twelve months of traineeship in pharmacies (six months in the United Kingdom and six months in the Republic of Lithuania). The chamber is of the opinion that, if all those requirements had been met in a single Member State, that is to say, in the United Kingdom, the applicant would have obtained evidence of formal qualifications as a pharmacist that would have been recognised in the Republic of Lithuania, in accordance with the principle of automatic recognition laid down in Article 21 of Directive 2005/36/EC.
- 18 In the Republic of Lithuania, professional qualifications as a pharmacist are awarded upon the completion of five years' integrated studies on a full-time basis. If the evidence adduced in the case is assessed only formally, it appears to the chamber that the applicant in fact meets the requirements laid down in Order No V-802: first, her academic education completed in the United Kingdom is recognised in Lithuania and, second, in Lithuania she has carried out a traineeship of the extent required for the purpose of obtaining the professional qualifications as a pharmacist.
- 19 Therefore, the applicant has in substance fulfilled the requirements necessary for obtaining the professional qualifications as a pharmacist, for the purposes of Article 44 of Directive 2005/36/EC, but she is not recognised as having (is not conferred) the professional qualifications in the host Member State for purely formal reasons, that is to say, the applicant does not possess formal evidence attesting to the professional qualifications. She does not possess such evidence

because, due to difficult personal circumstances, she fulfilled the requirements necessary for obtaining the qualifications as a pharmacist not in a single Member State of the European Union but, taking advantage of a fundamental EU freedom – the free movement of persons – in two Member States of the European Union and now seeks to pursue the profession of pharmacist in one of them, the Republic of Lithuania.

- 20 The Court of Justice has interpreted the provisions of the general system for the recognition of training (judgment of 14 September 2000, *Hocsman*, C-238/98, EU:C:2000:440, paragraphs 31 to 34, and judgment of 8 July 1999, *Fernández de Bobadilla*, C-234/97, EU:C:1999:367, paragraph 33); however, the chamber cannot be guided by this case-law in the present case due to different circumstances (in the cases referred to, the persons possessed evidence attesting to professional qualifications).

*Articles 45 and 49 TFEU and Article 15 of the Charter*

- 21 Since application of the general system for recognition under Directive 2005/36/EC is provided for only in certain cases, the question arises for the chamber whether, in the present case, the applicant is entitled to seek the recognition of her professional qualifications on the basis of Article 45 TFEU, laying down freedom of movement for workers, and Article 49 TFEU, enshrining freedom of establishment, as well as Article 15(1) of the Charter, according to which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation, and Article 15(2) of the Charter, according to which every citizen of the Union has the freedom to seek employment, to work, and to exercise the right of establishment.
- 22 According to the case-law of the Court of Justice, national rules establishing the conditions for obtaining qualifications may hinder the exercise of fundamental freedoms if the national rules at issue fail to take account of the knowledge and qualifications already acquired by the person concerned in another Member State (see judgment of 7 May 1991, *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 15; judgment of 13 November 2003, *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 62; and judgment of 10 December 2009, *Pešla*, C-345/08, EU:C:2009:771, paragraph 36). The authorities of a Member State must take into consideration all the diplomas, certificates and other documentary evidence of the person concerned as well as relevant experience when making a comparison between the competences proved by those documents and that experience and the knowledge and qualifications required by the national legal measures (see judgment in *Vlassopoulou*, paragraph 16; judgment of 22 January 2002, *Dreessen*, C-31/00, EU:C:2002:35, paragraph 24; and judgment in *Morgenbesser*, paragraphs 57 and 58). That comparative examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those attested by the national diploma. That assessment of the equivalence of the foreign



diploma must be carried out exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates (see judgment in *Vlassopoulou*, paragraph 17; judgment in *Morgenbesser*, paragraph 68; and judgment in *Pešla*, paragraph 39).

- 23 Thus, even if the answer to the first question were in the negative, in particular due to the fact that a situation such as that in the present case does not fall within the scope of Directive 2005/36/EC because the applicant has not obtained evidence of formal qualifications, so that such a situation is not harmonised by EU secondary legislation, the view is to be taken that the applicant should be entitled to rely directly on the provisions of EU primary law. In that case, the competent authority should, pursuant to the provisions of the TFEU and the Charter, assess the applicant's professional training and compare it with the professional training required in the Republic of Lithuania, and take into account her professional experience and additional training. If any differences are found, it could ask the applicant to compensate for those differences or to obtain additional professional experience. Otherwise, it seems to the chamber that the actions of the competent authorities could be viewed as hindering the exercise of the fundamental freedoms guaranteed by the TFEU and the Charter and those actions may make their implementation less appealing or totally impossible.