

Case C-48/24**Request for a preliminary ruling****Date lodged:**

25 January 2024

Referring court:

Lietuvos vyriausiasis administracinis teismas (Lithuania)

Date of the decision to refer:

24 January 2024

Applicant at first instance and appellant:

VšĮ Vilniaus tarptautinė mokykla

Defendant at first instance and respondent:

Valstybinė kalbos inspekcija

[...]

**LIETUVOS VYRIAUSIASIS ADMINISTRACINIS TEISMAS (Supreme
Administrative Court of Lithuania)****ORDER**

24 January 2024

[...]

The present panel of judges of the Supreme Administrative Court of Lithuania [...] [composition of the court and names of the persons involved in the case]

has examined an administrative case, in oral appeal proceedings, concerning the appeal lodged by the appellant, *VšĮ Vilniaus tarptautinė mokykla* (Vilnius International School), against the judgment of the Vilnius Regional Administrative Court of 17 November 2022 in administrative proceedings brought by [that] appellant [...] against the respondent, Valstybinė kalbos inspekcija (‘the State Language Inspectorate’), concerning the annulment of the order.

The present panel of judges

has determined as follows:

I.

1. The present case concerns a dispute between the appellant, *VšĮ Vilniaus tarptautinė mokykla* (the ‘appellant’, or the ‘School’), and the State Language Inspectorate (the ‘respondent’, or the ‘Inspectorate’), regarding the Inspectorate’s order No 30 of 26 May 2022 (‘the Order’). Having established that 18 employees of the School have not passed the examination of category II proficiency in the State language, as set out in Resolution No 1688 of the Government of the Republic of Lithuania of 24 December 2003 ‘On the Approval and Implementation of the Categories of Proficiency in the State Language’ (‘the Resolution’), in its Order, the Inspectorate required the employees of the School to pass the examination (or to submit the necessary documents) in the category mentioned above by 2 February 2023. The Order also warns the appellant that non-compliance with that Order will result in the application of penalties, as laid down by the laws of the Republic of Lithuania.

Legal framework. EU law

2. Pursuant to Article 49 of the Treaty on the Functioning of the European Union (‘TFEU’):

‘Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.’

3. Pursuant to Article 1 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’), that 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 is to recognise professional qualifications obtained in one or more other Member States and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession. That directive also establishes rules concerning partial access to a regulated profession and recognition of professional traineeships pursued in another Member State.

4. Article 53(1) of Directive 2005/36/EC provides that ‘Professionals benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State’. Article 53(2) provides that ‘a Member State shall ensure that any controls carried out by, or under the supervision of, the competent authority for controlling compliance with the obligation under paragraph 1 shall be limited to the knowledge of one official language of the host Member State, or one administrative language of the host Member State provided that it is also an official language of the Union’. Article 53(3) provides that ‘controls carried out in accordance with paragraph 2 may be imposed if the profession to be practised has patient safety implications. Controls may be imposed in respect of other professions in cases where there is a serious and concrete doubt about the sufficiency of the professional’s language knowledge in respect of the professional activities that that professional intends to pursue. Controls may be carried out only after the issuance of a European Professional Card in accordance with Article 4d or after the recognition of a professional qualification, as the case may be’. Article 53(4) provides that ‘any language controls shall be proportionate to the activity to be pursued. The professional concerned shall be allowed to appeal such controls under national law’.

Legal context. National law

5. Article 14 of the Constitution of the Republic of Lithuania provides that Lithuanian is to be the State language.

6. Article 2 of the Law of the Republic of Lithuania on the State Language (‘the Law on the State Language’) provides that the Lithuanian language is the state language of the Republic of Lithuania.

7. Pursuant to Article 6 of the Law on the State Language, heads, employees and officers of state and municipal institutions, bodies, agencies, as well as heads, employees and officers of the police, law-enforcement services, establishments of communications, transportation, health and social security and other establishments providing services to the population must know the state language according to the language proficiency categories, established by the Government of the Republic of Lithuania.

8. The Government, in accordance with Article 6 of the Law on the State Language, Resolution No 1688 of 24 December 2003 ‘On the Approval and Implementation of the Categories of Proficiency in the State Language’ (as last amended on 16 March 2022 by Resolution No 227 of the Government of the Republic of Lithuania; the ‘Resolution’) approved the establishment of categories of proficiency in the State language and a description of the procedure for their application (the ‘Description’). The resolution mentioned above also instructs the heads of state and municipal institutions and bodies, public institutions owned or shared by the state or municipalities, regional development councils, and establishments providing services to the population to approve the lists of posts of

civil servants, state officials and employees employed under an employment contract and receiving salaries from the state budget, municipal budgets and other state monetary funds, which are subject to specific categories of proficiency in the State language (paragraph 2 of the Resolution). In addition, the Resolution recommends that the heads of state and municipal enterprises, associations, undertakings, bodies and organisations, other than those referred to in paragraph 2 of that Resolution, should establish a category of proficiency in the State language for posts whose job description includes the functions of communicating with persons, drafting or completing documents, and to draw up a list of those posts (paragraph 3 of the Resolution). For the employment of foreigners who are or have been granted temporary protection in the Republic of Lithuania, the categories of proficiency in the State language do not apply for a period of two years from the date on which temporary protection in the Republic of Lithuania was granted to those persons (paragraph 4 of the Resolution).

9. Paragraph 2 of the Description states that the category of proficiency in the State language is intended to assess a person's proficiency in the State language. In determining the category of proficiency in the State language, the levels of proficiency are based on the Common European Framework of Reference for Languages and the descriptions of the content of the levels of proficiency in Lithuanian as a foreign language, approved by the State Commission of the Lithuanian Language at its meeting on 17 June 2016, and on the Description.

10. It is apparent from Paragraph 6 of the Description that there are three categories of proficiency in the State language (the first category is the lowest and the third category is the highest). Paragraph 6.2 of the Description indicates that the second category of proficiency in the State language corresponds to level B1 of proficiency in the Lithuanian language (the requirements for a person's proficiency in the Lithuanian language are described in paragraph 5.3 of the Description).

11. Paragraph 5.3 of the Description states: 'Lithuanian language proficiency level B1 'Threshold' (independent user). A person is able to understand spoken and written texts on familiar topics, to speak on a wide range of topics of everyday life and work, to describe experiences, events, dreams, hopes, wishes, to briefly state reasons, to explain opinions or plans, to fill in standard forms of documents, to write short texts on topics of everyday life and work, to produce a simple coherent text on topics that are familiar or of interest to him. Also, the person is able to understand spoken language, written text and to communicate.'

12. Paragraph 8 of the Description indicates that the second category of proficiency in the State language applies to employees in the fields of education, culture, health care, social security and other areas, civil servants and public officials, who are required to have education at a level no than higher than higher college education, post-secondary education acquired before 2009 or special secondary education acquired before 1995, if on a regular basis they must

communicate with persons and/or complete standard forms of documents (except for teachers teaching in the State language).

13. The recitals of the Law of the Republic of Lithuania on Education (the ‘Law on Education’) states that education is an activity intended to provide an individual with a basis for a full independent life and to assist the individual in the continuous improvement of his or her abilities. [...]. [elaboration on the significance of education]

14. Article 72(1) of the Law on Education indicates that schools of foreign states and international organisations (except higher education institutions) are to be established and function in the Republic of Lithuania according to the terms and in accordance with the procedure set forth in this Law, international agreements of the Republic of Lithuania and other legal acts. Educational programmes of foreign States and international organisations (except higher education study programmes) may be carried out (stopped) in accordance with the procedure laid down by the Government upon the written consent of the Minister of Education and Science. Pursuant to Article 72(3) of the Law on Education, educational programmes of foreign countries and international organisations may be implemented in schools of the Republic of Lithuania in languages other than Lithuanian. Persons who have graduated from educational programmes of foreign states and international organisations in Lithuania are issued certificates by the respective foreign states or organisations.

15. Article 48(1) of the Law on Education lays down the educational and qualification requirements for persons seeking to work as a teacher. Article 48(3) of that law provides that teachers referred to in Article 48(1) of that law must have the qualifications established by the Minister of Education and Science. Pursuant to Article 48(4) of that law, a person who has acquired a qualification in a Member State or the Swiss Confederation, and who is recognised under the procedure laid down in the Law of the Republic of Lithuania on the Recognition of Regulated Professional Qualifications and who meets the requirements set out in Article 48(1) and(3) of the Law on Education, may work as a teacher in Lithuania.

16. Order No V-774 of the Minister of Education, Science and Sport of the Republic of Lithuania of 29 August 2014 ‘On the Approval of the Description of the Requirements for the Qualification of Teachers’ (the relevant wording in the case, as most recently amended by Order No V-611 of the Minister of Education, Science and Sport of the Republic of Lithuania of 21 April 2022) approves [...] description, adopted in implementation of the provisions of Article 48[(2) and] (3) of the Law on Education (the Description of the Qualification of Teachers), sets out that teachers working in general education, vocational training and non-formal education programmes must be proficient in the Lithuanian language, the level of their proficiency in the Lithuanian language must comply with the requirements of the categories of proficiency in the State language approved by the [Resolution], and they must have been attended courses on the standard of the Lithuanian

language [...] within one year from the beginning of their employment as a teacher, unless they have taken a course of at least 22 hours or 1 study credit during their studies.

17. Paragraph 26 of the Procedure approved by Resolution No 649 of the Government of 6 June 2012 ‘On the Approval of the Description of the procedure for issuing, suspending and revoking the consent to implement educational programmes of foreign countries and international organisations (except for higher education study programmes)’ (the wording relevant to the case as amended by Resolution No 785 of the Government of the Republic of Lithuania of 28 August 2013) establishes the duties of the consent holder, when implementing general school education programmes of a foreign state or an international organisation, to ensure proficiency in the State language in accordance with the general programmes [...] approved by the Minister of Education and Science and to comply with the requirements of the Law on Education and other legal acts [...].

Relevant facts

18. The appellant is a private educational institution operating in Lithuania since 2004. According to the data of the State enterprise Registers Centre, the founder of that educational institution is a citizen of the Republic of Lithuania, while the shareholders are citizens of the Kingdom of Denmark, the Republic of Finland and the United States of America [...]. The School has obtained the approval of the Government of the Republic of Lithuania and the consent of the Ministry of Education, Science and Sport of the Republic of Lithuania to deliver the Cambridge International AS/A level programme, the International Baccalaureate Primary Years and Middle Years Programmes.

19. On 19 and 25 May 2022, the Inspectorate carried out an inspection of the School’s compliance with the Law on the State Language and the [Resolution]. It is apparent from the inspection report of 26 May 2022 by the Inspectorate that the inspection covered the following documents: (i) documents attesting proficiency in the State language; (ii) orders regarding personnel matters; (iii) documents intended to be sent externally by the institution; and (iv) agreements. That inspection report found that: (i) 18 employees of the School have not passed the examination in accordance with the prescribed category of proficiency in the State language (or have not submitted the required documents); (ii) no language errors were observed in the inspected written materials.

20. On the basis of the inspection report mentioned above, the respondent adopted the Order contested in the present case, which: (i) found that 18 employees of the School have not passed the examination (or submitted the necessary documents) for category II proficiency in the State language, as set out in the Description approved by the [Resolution]; (ii) stated that the head of the School was responsible for that matter under Article 498 of the Code of Administrative Offences of the Republic of Lithuania; (iii) requested that the

employees of the School pass the examination (or submit the required documents) for category II proficiency in the State language by 2 February 2023 and that the School notify the Inspectorate in writing by 9 February 2023.

21. The appellant appealed to the Vilnius Regional Administrative Court, seeking to have the respondent's Order set aside. The Vilnius Regional Administrative Court dismissed the appellant's appeal by judgment of 17 November 2022. The appellant appealed to the Supreme Administrative Court of Lithuania.

The present panel of judges

finds as follows:

II.

22. Having established that 18 of the School's staff (according to the data provided by the appellant, 5 EU nationals, 4 US nationals, 3 South African nationals, 3 Australian nationals, one Ukrainian and one Moldovan national and one teacher with dual Russian and Lebanese nationality) had not passed the examination (or had not submitted the required documents) for category II proficiency in the State language, as laid down in the Description approved by the [Resolution], the Inspectorate, by means of the contested Order, requested the relevant employees of the School to either pass the examination or to submit the required documents. The requirement of the Order applies to the administrative staff of the School – the head and the deputy head for education, as well as the teachers of the School.

23. In its pleadings, the appellant, first of all, argues that the requirement of Article 6 of the Law on the State Language does not apply to it, as the School is not classified, in the view of the appellant, as an 'establishment providing services to the population'. In that respect, the appellant submits that the School is a private educational institution founded neither by the state nor by the municipalities, which has been operating since 2004, teaches its programme in English and employs foreign professionals.

24. The appellant stresses that, in its activities, the School complies with the Law on the State Language and fully complies with its obligation to use the Lithuanian language in those situations where it is expressly required by that law. For example, the appellant processes all documents in the State language, as provided for in Article 4 of the Law on the State Language, and complies with the requirement for all schools to teach their students, *inter alia*, in the State language, as laid down in Article 12 of that law. In addition, all administrative staff of the School who are responsible for initial contact with members of the public, written or telephone enquiries, are able to and do communicate in fluent Lithuanian at the appropriate level.

25. In that context, the appellant points out that the teachers at the School do not provide services to members of the public. Teachers deliver the teaching content to students whose parents/guardians have voluntarily chosen the School for their children's education and who have voluntarily entered into a services agreement and are paying a fee for those services. The services agreement, which is concluded in the Lithuanian and English languages, specifies which programmes may be delivered to students, namely the International Baccalaureate (primary or middle years) or the Cambridge International AS/A level programme. Both of those programmes are taught in English. There are no programmes taught in Lithuanian at the School. By choosing the School, parents understand that the programme will be delivered to their children in English. According to the appellant, over 20 years of its activities no complaints have been received from parents, guardians or students concerning the use of the English language.

26. In the context of the requirement for teachers to pass the State language examination, as set out in the respondent's Order, the appellant also refers to the important fact that teachers initially start working at the School on fixed-term contracts and only if they decide to stay in Lithuania for more than two years are they recruited on the basis of open-ended contracts. According to the information provided by the appellant, not all the teachers who were required by the Order to pass the State language examination intended to remain in employment at the end of their fixed-term contract.

27. The respondent, in its reply to the appeal, takes the position that the term 'establishment providing services to the population' as provided for in Article 6 of the Law on the State Language is clear, based on a systematic method of legal interpretation, i.e. the requirements for proficiency in the State language apply to 'educators' and 'education workers'. According to the respondent, the legislator has included in the list of entities which are obliged to have category II proficiency in the State language both persons working in the public sector (civil servants, officials) and those working in a certain field in the private sector (education, culture, and health care workers, as well as workers in other fields). Accordingly, the respondent disagrees with the appellant's position that persons working in the private sector, and in particular employees of legal entities providing educational services in the private sector, are not subject to the requirements for proficiency in the State language. In that respect, the respondent, *inter alia*, pointed out that the first instance court was provided with Letter No SR-2861 of the Ministry of Education, Science and Sport of the Republic of Lithuania of 27 July 2022, which sets out the official position that the requirements for proficiency in the State language apply to all teachers working in general education, vocational education and non-formal education programmes, irrespective of the form of the legal entity or its ownership.

28. In the respondent's view, the requirement of the Order for the administrative staff and teachers of the School to pass the State language examination in the prescribed category is not contrary to Article 72(3) of the Law on Education, the purpose of which is to provide an opportunity to learn in foreign languages in

accordance with the educational methodologies of other countries. The purpose of the Order addressed to the School administration and to the teachers teaching there is to ensure that they meet the requirements as to qualifications laid down by the legislation and not to prohibit them from exercising their functions, in the provision of educational services. The respondent also points out that the head and the deputy head are required to prepare documents in the State language, to communicate with public administration authorities, the staff of the institution and students' parents, and that they therefore meet all the criteria for concluding that they are also required to have category II proficiency in the State language. In the Inspectorate's view, such a requirement is not excessive and is proportionate to the objective pursued.

29. In those circumstances, the panel of judges concludes that, in the present administrative proceedings, the appellant, who is the addressee of the contested Order, is providing public services, in which a defined group of entities is bound by legal obligations based on the parties' pre-agreed intention to provide and receive, for a fee, specific content services in the English language.

30. The first paragraph of Article 49 TFEU provides that, within the framework of the provisions in Chapter 2 of Title IV in Part Three of the TFEU, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are to be prohibited.

31. Considering the circumstances of the present case, the panel of judges has doubts as to whether the legal relationship giving rise to the dispute falls within the scope of the above-mentioned EU legal rule. In that context, two contrasting aspects must be mentioned.

31.1. The aspect of the nationality of the founder of the School. It is understood that freedom of establishment can be relied on by both legal persons and natural persons, who are nationals of EU or EFTA [...] Member States. It is clear from the content of Article 49 TFEU that freedom of establishment is guaranteed in the territory of a Member State other than the state of nationality of the founding entity. However, in the administrative proceedings at hand, the founder of the School is a national of the Republic of Lithuania, which raises the question whether the situation in question qualifies as a so-called 'domestic situation', where all the circumstances of the case are confined to a single Member State and, consequently, EU law (in the present case, in particular, Article 49 TFEU) does not apply. On the other hand, according to the settled case-law of the Court, all measures which prohibit, impede or render less attractive the exercise of the freedoms guaranteed by Article 49 TFEU must be regarded as restrictions on the freedom of establishment (judgment of the Court of Justice of 22 January 2015 in *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 45). In view of the duty of national authorities, including courts, not to apply national legislation which is not consistent with EU law, and of the fact that, in the view of the panel of judges, the national legislation at issue in the administrative proceedings raises questions of compliance with the

regulation laid down in Article 49 TFEU, it should be considered that, in that context, the nationality of the founder of the School is not decisive. In that context, it should also be pointed out that the shareholders of the School, who jointly own 100% of the shares of that educational establishment, are nationals of the Kingdom of Denmark, the Republic of Finland and the United States of America, and therefore, *inter alia*, nationals of other EU Member States.

31.2. The aspect of the School's activities The Court has ruled that the provision of higher education courses for remuneration is an economic activity falling within Chapter 2 of Title IV in Part Three of TFEU when that activity is carried on by a national of one Member State in another Member State on a stable and continuous basis from a principal or secondary establishment in the latter Member State (judgment of 6 October 2020 in *Commission v Hungary (Higher Education)*, C-66/18, EU:C:2020:792, paragraph 160). However, considering that, in the present case, the appellant implements the Cambridge International AS/A level programme, the International Baccalaureate Primary Years and Middle Years programmes, the referring court has doubts as to whether Article 49 TFEU applies in circumstances such as those of the present case.

32. Assuming that the situation in the present case falls within the scope of Article 49 TFEU, the requirement imposed on the administrative staff and teachers of a private educational establishment, where the learning process is organised exclusively in English, to have category II proficiency in the State language, is, in the opinion of the panel of judges, to be regarded as a restriction on freedom of establishment.

33. As the Court has consistently held, a restriction on the freedom of establishment is permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it (judgment of 6 October 2020 in *Commission v Hungary*, C-66/18, EU:C:2020:792, paragraph 178).

34. In its case-law the Court of Justice has recognised that the objective of promoting the use of one of the official languages of a Member State constitutes a legitimate objective which, in principle, justifies a restriction on the obligations imposed by the freedom of establishment enshrined in Article 49 TFEU (judgment of the Court of Justice of 16 April 2023 in *Las*, C-202/11, EU:C:2013:239, paragraph 27). As regards the compatibility with the principle of proportionality of a particular measure restricting the right of establishment, the Court has held, for example, that legislation of a Member State which would require, with no exceptions, that higher education courses of study be provided in the official language of that Member State would exceed what is necessary and proportionate for attaining the objective pursued by that legislation, namely the defence and promotion of that language. In actual fact, according to the Court, such legislation

would lead to the outright imposition of the use of that language in all higher education programmes, to the exclusion of any other language and without taking account of reasons which may justify different higher education courses of study being offered in other languages. On the other hand, Member States may introduce, in principle, an obligation to use their official language in those courses, provided that such an obligation is accompanied by exceptions which ensure that a language other than the official language may be used in the context of university education (judgment of the Grand Chamber of 7 September 2022 in *Boriss Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 84-85).

35. Having assessed the specific legal situation of the appellant, as discussed above, in particular noting that the general education programme services are provided, pursuant to Article 72(1) of the Law on Education, in the context of the International Baccalaureate Primary Years and Middle Years programmes and the Cambridge International AS/A level programme, the panel of judges concludes that the legal framework relevant in the case does not provide for any exceptions to the requirement for the administrative staff and teachers of an educational institution to have a category II proficiency in the Lithuanian State language. Accordingly, in the view of the panel of judges, the question arises as to whether the requirements laid down by national law in the relevant factual and legal circumstances, such as those established in the present case are proportional, first, in relation to the administrative staff of the educational establishment and, second, in relation to teachers.

36. In addition, to the extent that the legal relationship giving rise to the dispute arises from the requirement for citizens of foreign states (as well as EU Member States) seeking to pursue the profession of a teacher in a private educational institution operating in the Republic of Lithuania to have category II proficiency in the Lithuanian language, it should be borne in mind that the profession of a teacher, vocational teacher, educator, special needs educator, speech therapist, teacher specialising in education of deaf and hearing-impaired students, teacher specialising in education of blind or visually-impaired students, socio-educational instructor and school psychologist is a regulated profession in the Republic of Lithuania. The panel of judges notes that in the circumstances of the present case, the qualifications of the teachers working at the School are not called into question, but the dispute arose in relation to an additional requirement on the teachers, the responsibility for the supervision of the implementation of which lies with the respondent rather than the competent educational authorities.

37. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications 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 must recognise professional qualifications obtained in one or more other Member States and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession ([...] Article 1). According to Article 53 of Directive 2005/36/EC,

professionals benefiting from the recognition of professional qualifications are to have a knowledge of languages necessary for practising the profession in the host Member State [...]. Any language controls are to be proportionate to the activity to be pursued [...].

38. The User Guide for Directive 2005/36/EC published by the European Commission (<https://ec.europa.eu/docsroom/documents/40185>) indicates that the host Member State may require knowledge of its language where the nature of the profession sought to be pursued justifies such a requirement. In any event, the language requirement must not go beyond what is necessary for practising the profession. The host Member State may not systematically check the language knowledge of professionals applying for the recognition of their qualifications. This is only allowed for professions with patient safety implications, such as doctors, nurses, etc. For all other professions, language knowledge may only be checked in cases of serious and concrete doubt and should be proportionate to the activity being pursued (User Guide for Directive 2005/36/EC, p. 32).

39. The Court of Justice has consistently recognised in its case-law that a policy intended to protect and promote a language of a Member State which is both the national language and the first official language is not prohibited. However, the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States. For example, in the Court's view, a permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner (judgment of the Court of Justice of 28 November 1989 in *Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee*, C-379/87, EU:C:1989:599, paragraphs 19 and 24).

40. In the light of the foregoing, the panel of judges has doubts as to whether, in circumstances such as those of the present case, the requirement for proficiency in the State language imposed on teachers working in a private educational establishment, where the educational process is organised exclusively in English, is compatible with the rules laid down in Article 53 of Directive 2005/36/EC.

III.

41. [...] must refer the matter to the Court of Justice for a preliminary ruling [...] [duty to refer under the third paragraph of Article 267 TFEU].

42. An answer to the questions set out in the operative part of the present Order is of fundamental importance for the present case since it would also enable an unequivocal and clear decision to be made regarding the extent to which the requirement for proficiency in the State language applies to teachers and administrative staff of educational establishments, thereby in particular ensuring the primacy of EU law, and, *inter alia*, would also make it possible to guarantee uniform national case-law.

In the light of the foregoing considerations and [...] [reference to provisions of procedural law], the panel of judges of the Supreme Administrative Court of Lithuania

orders as follows:

[...] [standard procedural wording]

The following questions of significance for the present case are referred to the Court of Justice of the European Union for a preliminary ruling:

‘1. Is Article 49 of the Treaty on the Functioning of the European Union to be interpreted as meaning that it includes within its scope the requirement, laid down by national law, for proficiency in the State language which applies to the administrative staff and teachers of an educational establishment founded by a private natural person, which establishment implements an international secondary education programme and international baccalaureate programmes for primary years and middle years?’

2. If the answer to the first question is in the affirmative, is Article 49 of the Treaty on the Functioning of the European Union to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the requirement for proficiency in the State language applies without exception, first, to all teachers working in an educational establishment founded by a private natural person delivering an international secondary education programme and international baccalaureate primary years and middle years programmes, and, second, to the administrative staff of such educational establishment, irrespective of any circumstances specific to the activities of the educational establishment concerned?’

3. Is Article 53 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the requirement for proficiency in the State language applies, without exception, to all teachers working in an educational establishment founded by a private natural person and delivering an international secondary education programme and international baccalaureate primary years and middle years programmes, irrespective of any circumstances specific to the activities of the educational establishment concerned?’

[...]

[standard procedural wording and composition of the court]

WORKING DOCUMENT