

Case C-634/20**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:**

25 November 2020

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

25 November 2020

Appellant:

A

Other party:

Sosiaali- ja terveystieteiden lupa- ja valvontavirasto (Valvira)

Subject matter and legal basis of the main proceedings

Request for a preliminary ruling – Article 267 TFEU – Recognition of professional qualifications and examinations – Healthcare professional – Doctor – Directive 2005/36/EC – Articles 45 and 49 TFEU

Subject matter of the request

The Korkein hallinto-oikeus (Supreme Administrative Court, Finland) is called on to determine whether the national authority (Sosiaali- ja terveystieteiden lupa- ja valvontavirasto, Licensing and Supervisory Authority for Social Affairs and Health, Finland, ‘Valvira’) was entitled to grant A, who had obtained an undergraduate degree in medicine in the United Kingdom, authorisation to pursue the profession of doctor in Finland for a limited period of three years and with the restriction that A could pursue the profession of doctor as a licensed professional only under the direction and supervision of a licensed doctor authorised to pursue the profession independently and that she could do so during that period solely for

the purpose of completing three years of special training in general medical practice in Finland.

Question referred

1. Having regard to the principle of proportionality, is Article 45 or 49 TFEU to be interpreted as precluding the competent authority of a host Member State from granting, on the basis of the national legislation, a person the right to pursue the profession of doctor for a limited period of three years and subject to the restriction that that person may practise only under the direction and supervision of a licensed doctor and must complete three years of special training in general medical practice during that same period in order to obtain authorisation to pursue the profession of doctor independently in the host Member State, taking account of the fact that:
 - (a) the person has obtained an undergraduate degree in medicine in the home Member State but, when applying for recognition of that professional qualification in the host Member State, he or she was unable to provide a certificate attesting to the completion of a professional traineeship of one year's duration, which is required as a further condition for obtaining the professional qualification in the home Member State;
 - (b) for the purposes of Article 55a of the Professional Qualifications Directive, in the host Member State, the person has been offered, as a preferential alternative, which was declined by him or her, the possibility of carrying out in the host Member State, for a period of three years, a professional traineeship that is in accordance with the guidelines of the home Member State and applying to the competent authority of the home Member State for recognition of that traineeship in order subsequently to be able to reapply in the host Member State for the right to pursue the profession of doctor through the system of automatic recognition referred to in the directive;
 - (c) the purpose of the national legislation of the host Member State is to promote patient safety and the quality of healthcare services by ensuring that healthcare professionals have the training required for their professional activity, other sufficient professional qualifications and other skills required for the professional activity?

Provisions of EU law cited

Articles 45 and 49 TFEU

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ('Professional Qualifications Directive'), as amended by Directive 2013/55/EU of the European

Parliament and of the Council of 20 November 2013, recitals 6 and 12, and Articles 10, 21, 23 and 55a

Case-law of the Court of Justice cited

Judgment of 30 April 2014, *Ordre des Architectes* (C-365/13, EU:C:2014:280, paragraphs 21 and 27).

Provisions of national law cited

*Laki terveydenhuollon ammattihenkilöistä (559/1994,*¹ *Law on healthcare professionals No 559/1994; 'Law on professionals')*

The provisions on healthcare professionals laid down in the Professional Qualifications Directive were included in that Law.

Pursuant to point 1 of Paragraph 1 of the Law on professionals, the purpose of that law is to promote patient safety and the quality of healthcare services by ensuring that the healthcare professionals within the meaning of that law have the training required for their professional activity, other sufficient professional qualifications and other skills required for the professional activity.

Pursuant to Paragraph 6(1) of the Law on professionals, Valvira is to grant, upon application, authorisation to pursue the profession of doctor or dentist as a licensed professional in Finland to a national of a State belonging to the European Union (*EU State*) or a State belonging to the European Economic Area (*EEA State*) who, on the basis of training completed in an EU or EEA State other than Finland, has been awarded in the State in question evidence of formal qualifications as referred to in the Union's rules on recognition, which is required in the State in question in order to acquire the right to pursue the profession of doctor or dentist.

Pursuant to subparagraph 1 of Paragraph 6a² (as amended by legislative amendment No 1659/2015)³ of the Law on professionals, in force at the time of

¹ Finlex: <https://www.finlex.fi/fi/laki/ajantasa/1994/19940559>.

² Paragraph 6a of the Law on professionals was amended by Law No 347/2017, which entered into force on 19 June 2017. Pursuant to subparagraph 1 of Paragraph 6a of the Law on professionals which is now in force, Valvira is to grant, upon application, to a person who has obtained an undergraduate degree in medicine in an EU or EEA State in which the right to pursue the profession of doctor is contingent upon completion of a postgraduate professional traineeship, authorisation to pursue the profession of doctor in Finland as a licensed professional under the direction and supervision of a licensed professional, designated in writing, who is entitled to pursue the profession in question independently in a health care institution within the meaning of point 4 of Paragraph 2 of the Law on the status and rights of patients (No 785/1992). The right to pursue a profession is granted for a limited period of three years. Valvira may extend the three-year period, where there are just grounds for doing so. Finlex: <https://www.finlex.fi/fi/laki/alkup/2017/20170347>. The Supreme Administrative Court takes the

the decision, Valvira is to grant, upon application and subject to the conditions determined by it, to a person who commenced medical studies before 1 January 2012 in an EU or EEA State in which the right to pursue the profession of doctor is contingent upon completion of a postgraduate professional traineeship and who has obtained an undergraduate degree in medicine in that State, authorisation to pursue the profession of doctor in Finland as a licensed professional under the direction and supervision of a licensed doctor entitled to pursue the profession in question independently in a health care institution within the meaning of point 4 of Paragraph 2 of the Law on the status and rights of patients (No 785/1992). The right to pursue a profession is granted for a limited period of three years. If the applicant has worked as a doctor in accordance with the conditions specified by Valvira for the period provided for in subparagraph 1, Valvira is to grant, in accordance with subparagraph 2 of this paragraph, upon application, to the applicant authorisation to pursue the profession of doctor independently in Finland. Valvira may extend the three-year period provided for in subparagraph 1, where there are just grounds for doing so.

Brief summary of the facts and procedure

- 1 A started studying medicine at the University of Edinburgh in 2008. On 6 July 2013, she obtained her undergraduate degree in medicine: ‘Bachelor of Medicine and Bachelor of Surgery’. The degree completed by A corresponds to the evidence of formal qualifications (Primary qualification) referred to with regard to the United Kingdom in point 5.1.1. of Annex V to the Professional Qualifications Directive.
- 2 By virtue of the degree that she had obtained, A had a restricted right to pursue the profession of doctor in the United Kingdom. She was entered as a ‘provisionally registered doctor with a licence to practise’ in the register of the General Medical Council of the United Kingdom. A was eligible to work in a postgraduate programme (‘UK Foundation Programme’). The Supreme Administrative Court takes the view that a doctor who has obtained an undergraduate degree cannot work during that period in roles other than those belonging to the programme in question.
- 3 After completing her degree, A returned to Finland and applied to Valvira for authorisation to pursue the profession of doctor in Finland as a licensed professional on the basis of the degree that she had obtained in the United Kingdom.
- 4 However, when applying for the right to pursue the profession of doctor, A was unable to provide the certificate accompanying the evidence of qualifications

view that the legislative amendment referred to above has not brought about any substantial change to the previously applicable legislation.

³ Finlex: <https://www.finlex.fi/fi/laki/alkup/2015/20151659>.

referred to with regard to the United Kingdom in point 5.1.1. of Annex V to the Professional Qualifications Directive (Certificate of experience), which is a prerequisite in the United Kingdom for the right to full registration with a licence to practise.

- 5 As A did not hold the aforementioned certificate, Valvira suggested that she convert the application for a licence to practice as a doctor into an application for a temporary licence. A agreed to this. According to Valvira, in order to obtain authorisation to pursue the profession of doctor independently in Finland, A had to do one of the following within a period of three years: (a) complete a professional traineeship in Finland in accordance with the guidelines of the United Kingdom and apply to the competent authority in the United Kingdom for recognition of that traineeship in accordance with Article 55a of the Professional Qualifications Directive in order subsequently to be able to apply for the right to pursue the profession of doctor in Finland through the automatic recognition system referred to in the directive; or (b) complete special training in general medical practice in Finland. A chose alternative (b), which does not lead to the automatic recognition of professional qualifications in other EU/EEA Member States within the meaning of the Professional Qualifications Directive.

Valvira

- 6 By decision of 3 November 2016, *Valvira* granted A, for the period from 2 November 2016 to 2 November 2019, authorisation to pursue the profession of doctor in Finland as a licensed professional under the direction and supervision of a licensed doctor authorised to pursue the profession independently. A was authorised to pursue the profession of doctor during that period solely for the purpose of completing three years of special training in general medical practice in Finland.
- 7 By decision of 4 May 2017, *Valvira* rejected an objection lodged by A. According to the grounds for that decision, A was granted the right to pursue the profession of doctor under Paragraph 6a (as amended by Legislative Amendment No 1659/2015) of the Law on professionals in a situation where she lacked the certificate of experience referred to in point 5.1.1. of Annex V to the Professional Qualifications Directive, which the United Kingdom had defined as being a component of the basic medical training harmonised at Union level.

Helsingin hallinto-oikeus (Helsinki Administrative Court)

- 8 A appealed to the Helsinki Administrative Court, requesting that the decision be annulled and the case be referred back to Valvira for reconsideration.
- 9 The *Helsinki Administrative Court* dismissed A's appeal by decision of 5 December 2017. According to the grounds for the decision, automatic recognition under the Professional Qualifications Directive was not possible because A had not provided the certificate referred to with regard to the United

Kingdom in point 5.1.1. of Annex V to the Professional Qualifications Directive. According to the Administrative Court, the general system of recognition was also out of the question, since A had not completed the basic medical training before the reference date specified in point 5.1.1. of Annex V (20 December 1976). According to the Administrative Court, the right granted to A in another EU Member State cannot be better than that granted in the home Member State.

- 10 According to the grounds for the Administrative Court’s decision, in A’s case it was necessary to apply Paragraph 6a (as amended by Legislative Amendment No 1659/2015) of the Law on professionals, on the basis of which a person who has obtained an undergraduate degree in medicine in another EU/EEA State has the possibility to complete a postgraduate professional traineeship in Finland and obtain the right to pursue the profession in Finland. According to the Administrative Court, Valvira was entitled to grant A the restricted right pursuant to Paragraph 6a (as amended by Legislative Amendment No 1659/2015) of the Law on professionals to pursue the profession of doctor in the period from 2 November 2016 to 2 November 2019 under the direction and supervision of another licensed doctor entitled to exercise the profession independently as a licensed professional.

Supreme Administrative Court

- 11 Before the Supreme Administrative Court, A claimed that her application for recognition of the undergraduate degree in medicine obtained in another Member State of the EU should be dealt with by applying the rules on the general system of recognition in the Professional Qualifications Directive, if the conditions for automatic recognition are not met.
- 12 According to A, the three-year limitation imposed on her right to pursue the profession of doctor is contrary to the freedom of establishment under Article 49 TFEU. The three-year period set by Valvira is discriminatory because it is nine times longer than the four-month compulsory medical internship included in the Finnish undergraduate degree in medicine, that is to say, the licentiate in medicine. She submits that Valvira did not make the individual comparison required by the general system for the recognition of professional qualifications between the undergraduate degree in medicine obtained in the United Kingdom and the Finnish licentiate degree in medicine. It is contrary to EU law to impose a three-year period of supervision as a condition for the grant of the right to pursue the profession independently without evidence of substantial, uncompensated differences compared to the national standard. The three-year period under supervision cannot be justified on the ground of ensuring patient safety either, she submits. Paragraph 6a of the Law on professions does not take into account the principles arising from the judgment of the Court of Justice in Case C-340/89, *Vlassopoulou*, EU:C:1991:193.

Succinct presentation of the reasons for the request

- 13 Valvira subsequently granted A authorisation to pursue the profession of doctor independently as a licensed professional in Finland on 1 November 2019. As A has not withdrawn her appeal before the Supreme Administrative Court, and the latter considers that an answer to a question concerning the interpretation of EU law is required in order to be able to resolve the case, the Supreme Administrative Court has referred that question to the Court of Justice for a ruling.
- 14 The Supreme Administrative Court considers that it is evident that A could not be granted authorisation to pursue the profession of doctor independently in Finland on the basis of the principle of automatic recognition within the meaning of Article 21 of the Professional Qualifications Directive, since A did not have the certificate of experience referred to with regard to the United Kingdom in point 5.1.1. of Annex V to that directive, which is to accompany the evidence of formal qualifications.
- 15 The Supreme Administrative Court considers that it is also evident that A could not be granted authorisation to pursue the profession of doctor independently in Finland on the basis of the general system for the recognition of evidence of training provided for in Chapter I of Title III of the Professional Qualifications Directive either, since she did not fulfil the conditions for the application of the general system for recognition set out in Article 10(b).
- 16 The Supreme Administrative Court takes the view that, since A did not fulfil either the conditions of the automatic system of recognition that are applicable to the profession of doctor or the conditions for the recognition of the professional qualification under the general system of recognition, Valvira was not obliged under the Professional Qualifications Directive to make a comparison to clarify the extent to which the content of the undergraduate degree in medicine obtained by A in the United Kingdom is equivalent to that of the undergraduate degree in medicine obtained in Finland (licentiate degree in medicine). Accordingly, the host Member State is precluded from imposing requirements for automatic recognition other than those laid down in the directive and the annexes thereto (judgment in Case C-365/13, *Ordre des Architectes*, paragraph 21 and the case-law cited).
- 17 The Supreme Administrative Court takes the view that neither the Professional Qualifications Directive nor the case-law of the Court of Justice relating thereto contains any express, legally binding rules for a situation such as that at issue in the present proceedings, in which a person applied in the host Member State for recognition of a doctor's professional qualification on the basis of an undergraduate degree in medicine obtained in the home Member State, without being able to provide an additional certificate attesting to the completion of a professional traineeship, as required by the home Member State for the purpose of obtaining the professional qualification.

- 18 In Finland, the national legislature has sought to resolve the problems caused by a situation such as that at issue in the present proceedings. Pursuant to Paragraph 6a(1) of the Law on professionals, Valvira is to grant, upon application, to a person who has obtained an undergraduate degree in medicine in an EU or EEA State in which the right to pursue the profession of doctor is contingent upon completion of a postgraduate professional traineeship, authorisation to pursue the profession of doctor in Finland as a licensed professional under the direction and supervision of a licensed professional, designated in writing, who is entitled to pursue the profession in question independently. The restricted right to pursue a profession is granted for a period of three years.
- 19 Pursuant to Paragraph 6a of the Law on professionals, Valvira offered A two alternatives for obtaining authorisation to pursue the profession of doctor independently in Finland. A had to do one of the following within a period of three years: (a) complete a professional traineeship in accordance with the guidelines of the United Kingdom and apply to the competent authority in the United Kingdom for recognition of that traineeship in accordance with Article 55a of the Professional Qualifications Directive in order to be able to apply for the right to pursue the profession of doctor in Finland by virtue of the system of automatic recognition referred to in the directive; or (b) complete special training in general medical practice in Finland. Alternative (a) was offered as a preferential option, but A opted for alternative (b), which does not lead to automatic recognition of professional qualifications in other EU/EEA Member States within the meaning of the Professional Qualifications Directive.
- 20 The Supreme Administrative Court considers that, since neither the Professional Qualifications Directive nor the case-law of the Court of Justice relating thereto contains any express, legally binding rules for a situation such as that at issue in the present proceedings, in which the competent authority ultimately decided the case on the basis of national legislation, the decision of the competent authority and the national legislation on which it is based must still be substantively assessed in the light of Articles 45 and 49 TFEU.
- 21 For this reason, the Supreme Administrative Court considers the submission of the request for a preliminary ruling to be indispensable for the resolution of the case.