

Anonymised version

Translation

C-8/23 – 1

Case C-8/23

Request for a preliminary ruling

Date lodged:

12 January 2023

Referring court:

Conseil d'État (France)

Date of the decision to refer:

27 December 2022

Applicant:

FH

Defendant:

Conseil national de l'ordre des médecins

[...]

The Conseil d'État (Council of State, France)
acting in its judicial capacity
(Litigation Section, Fourth and First Chambers combined)

[...]

[...]

Decision of 27 December 2022

[...]

[...] FH requests the Council of State to:

1) annul the decision of 17 September 2021, by which the Conseil national de l'ordre des Médecins (National Council of the Medical Association), acting through a select panel, refused to enter his name on the register of the Medical Association, on the ground that it was adopted *ultra vires*;

2) order the National Council of the Medical Association to pay the sum of EUR 3 000 pursuant to Article L. 761-1 of the Code de justice administrative (Code of Administrative Justice).

FH submits that the [contested] decision is vitiated by an error of law because his German diploma as a specialised doctor in anaesthetics, referred to in Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) falls under the system for mutual and unconditional recognition of professional qualifications obtained within the European Union and therefore allows him to pursue the profession of doctor of medicine in France.

[...] The National Council of the Medical Association contends that the application should be dismissed and that FH should be ordered to pay the sum of EUR 3 000 pursuant to Article L. 761-1 of the Code of Administrative Justice. It submits that the grounds for the application are unfounded.

[...]

[...] [Legal bases and outline of the procedure]

Whereas:

- 1 [...] [FH], a French-German national, holds a State diploma of doctor of medicine, awarded by the University of Monastir (Tunisia) on 18 September 2012. By a decision of 6 November 2015, the competent German authorities recognised that diploma as a qualification in basic medical training and allowed FH to pursue the profession of doctor of medicine and, by a decision of 1 August 2016, entered his name on the register of the Medical Association of Lower Saxony. On 28 January 2021, FH obtained the diploma of specialist in anaesthetics from the University of Hanover (Germany). On 25 March 2021, FH applied to the Saône-et-Loire Departmental Council of the Medical Association for his name to be entered on the association's register pursuant to Article L. 4111-1 of the Code de la santé publique (Public Health Code). By a decision of 20 May 2021, the Departmental Council refused to enter his name on the association's register. Following a decision of a select panel of the Bourgogne-Franche-Comté Regional Council of the Medical Association on 15 July 2021, which in turn also rejected his application to be entered on the association's register, FH brought an appeal to the National Council of the Medical Association which, acting through a select panel, refused, on 17 September 2021, to enter his name on the association's register. FH seeks the annulment of the latter decision on the ground that it was adopted *ultra vires*.

- 2 On the one hand, recitals 1 and 19 of Directive 2005/36/EC provide as follows: *‘(1) Pursuant to Article 3(1)(c) of the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons and services is one of the objectives of the Community. For nationals of the Member States, this includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their professional qualifications. In addition, Article 47(1) of the Treaty lays down that directives shall be issued for the mutual recognition of diplomas, certificates and other evidence of formal qualifications’ and ‘(19) Freedom of movement and the mutual recognition of the evidence of formal qualifications of doctors ... should be based on the fundamental principle of automatic recognition of the evidence of formal qualifications on the basis of coordinated minimum conditions for training. ...’.* Article 1 of that directive, entitled *‘Purpose’*, states: *‘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 ... shall 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 ...’.* Article 4 of the directive, entitled *‘Effects of recognition’*, provides: *‘1. The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is 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.’* Under Article 21, entitled *‘Principle of automatic recognition’*, which forms part of Chapter III [entitled] *‘Recognition on the basis of coordination of minimum training conditions’*: *‘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 ... listed in Annex V, points 5.1.1 [list of evidence of formal qualifications in basic medical training issued by the Member States], 5.1.2 [list of evidence of formal qualifications of specialised doctors issued by the Member States] ... respectively, which satisfy the minimum training conditions referred to in Articles 24 [basic medical training] [and] 25 [specialist medical training] ... 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. Such evidence of formal qualifications must be issued by the competent bodies in the Member States and accompanied, where appropriate, by the certificates listed in Annex V ...’.* It follows from Articles 10 et seq. of the directive that, apart from the cases referred to in Article 21, doctors with basic training and specialised doctors who obtained their professional qualifications in a Member State and who wish to pursue their profession in another Member State fall under the general system for the recognition of evidence of professional qualifications.

- 3 On the other hand, according to Article L. 4111-1 of the Public Health Code, *‘nobody may pursue the profession of doctor ... unless he or she is: (1) the holder of a diploma, certificate or other evidence of qualification referred to in Articles L. 4131-1, L. 4141-3 or L. 4151-5 ...’*. Under Article L. 4131-1 of that code, which was included, in particular, in order to transpose Directive 2005/36/EC, *‘the evidence of formal qualification required under paragraph 1 of Article L. 4111-1 is, for the profession of doctor, one of the following: (1) French State diploma of doctor of medicine; ... (2) if the person concerned is a national of a Member State of the European Union or of a State party to the Agreement on the European Economic Area: (a) the evidence of formal qualification as a doctor issued by one of those States in accordance with Community obligations and appearing on a list drawn up by decree of the ministers responsible for higher education and health [which is identical to the lists in points 5.1.1 and 5.1.2 of Annex V to the directive referred to in the preceding paragraph]; (b) the evidence of formal qualification as a doctor issued by a Member State or State party in accordance with Community obligations which is not included on the list referred to in (a) but which is accompanied by a declaration from that State certifying that it is approved as a qualification that complies with those obligations and regarded by the State as equivalent to the formal qualifications appearing on that list ...’*. Under [paragraph] II of Article L. 4111-2 of the Public Health Code, *‘the competent authority may also, on the advice of a committee that consists, inter alia, of professionals, issue individual authorisations to pursue the profession of doctor in the speciality concerned ... to nationals of Member States of the European Union or of States party to the Agreement on the European Economic Area who hold evidence of formal qualifications issued by a third State and recognised by a State, other than France, that is a Member State or State party, allowing them to legally pursue their profession there. In the case of doctors ..., this recognition relates to evidence of formal qualifications in both basic medical training and specialised medicine’*.
- 4 [...] The competent German authorities recognised the Tunisian diploma of doctor of medicine held by FH as equivalent to the German formal qualification in basic medical training referred to in point 5.1.1 of Annex V to Directive 2005/36/EC. On that basis, the German authorities authorised FH to pursue the profession of doctor by registering him with the Medical Association of Lower Saxony by a decision of 1 August 2016 and also allowed him to continue his training in Germany, leading to the award of a formal qualification in specialist medical training in anaesthetics. On 28 January 2021, FH obtained from the University of Hanover (Germany) the diploma of specialised doctor in anaesthetics which is referred to in point 5.1.2 of Annex V to the directive.
- 5 [...] [Furthermore,] FH applied to be registered in France by having his name entered on the register of the Medical Association as a specialised doctor, qualified in anaesthetics, arguing that his diploma of specialised doctor awarded in Germany is subject to automatic recognition under Article 21(1) of Directive 2005/36/EC as evidence of a formal qualification issued by a Member State of the European Union and referred to in point 5.1.2 of Annex V to that directive. The

select panel of the National Council of the Medical Association refused to grant his application on the grounds that, even though the German diploma of specialised doctor held by FH constitutes evidence of a formal qualification referred to in point 5.1.2 of Annex V to Directive 2005/36/EC and in the Arrêté du 13 juillet 2009 fixant les listes et les conditions de reconnaissance des titres de formation de médecin et de médecin spécialiste délivrés par les Etats membres de l'Union européenne ou parties à l'accord sur l'Espace économique européen visées au 2° de l'article L. 4131-1 du code de la santé publique (Decree of 13 July 2009 determining the lists and conditions for recognition of evidence of formal qualifications for doctors and specialised doctors awarded by Member States of the European Union or States party to the Agreement on the European Economic Area referred to in paragraph 2 of Article L. 4131-1 of the Public Health Code), it is not subject to automatic recognition because it was not issued in accordance with Community obligations, the directive providing in Article 25(4) that *'the Member States shall make the issuance of evidence of specialist medical training contingent upon possession of evidence of basic medical training referred to in Annex V, point 5.1.1'*. FH does not possess the evidence of formal qualifications in basic medical training referred to in point 5.1.1 of Annex V, since the State diploma of doctor of medicine he obtained in Tunisia was recognised only by the German authorities.

- 6 [...] FH, who does not purport to have three years' experience working as a doctor on German territory for the purposes of Article 3(3) of Directive 2005/36/EC, submits that that decision infringes EU law, since the system for automatic recognition of evidence of formal qualifications established by Article 21 of that directive does not permit the competent authorities of a Member State to refuse to allow a specialised doctor's qualification to be automatically recognised when that doctor wishes to pursue his or her profession in that Member State on the basis of a qualification as a specialised doctor issued in another Member State and referred to in point 5.1.2 of Annex V to that directive, even though that doctor does not hold evidence of one of the formal qualifications in basic medical training referred to in point 5.1.1 of Annex V, and Article 25(4) makes the issuance of evidence of a formal qualification as a specialised doctor contingent on possession of evidence of one of those formal qualifications in basic medical training.
- 7 The argument set out in the preceding paragraph raises the question of whether a doctor who is a national of one of the Member States of the European Union and who holds evidence of a formal qualification as a specialised doctor issued in a Member State as referred to in point 5.1.2 of Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications may rely, in another Member State, on the basis of that qualification alone, on the system for the automatic recognition of formal qualifications set out in Article 21 of that directive, even though he or she holds evidence of a formal qualification in basic medical training issued by a third State which has been recognised only by the Member State in which he or she obtained the diploma as a specialised doctor and which is not among those referred to in point 5.1.1 of Annex V to that directive, and Article 25(4) makes the

issuance of evidence of a formal qualification as a specialised doctor contingent on possession of evidence of one of the formal qualifications in basic medical training referred to. That question, which is decisive to the resolution of the present dispute, raises a serious difficulty of interpretation of EU law. Consequently, it is necessary to refer it to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union and, until the Court gives its ruling, to stay the proceedings in respect of the application.

DECIDES AS FOLLOWS:

Article 1: The proceedings on the application brought by FH are stayed until the Court of Justice of the European Union has given its ruling on the following question:

May a doctor who is a national of one of the Member States of the European Union and who holds evidence of a formal qualification as a specialised doctor issued in a Member State as referred to in point 5.1.2 of Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, rely, in another Member State, on the basis of that qualification alone, on the system for the automatic recognition of formal qualifications set out in Article 21 of that directive, even though he or she holds evidence of a formal qualification in basic medical training issued by a third State which has been recognised only by the Member State in which he or she obtained the diploma as a specialised doctor and which is not among those referred to in point 5.1.1 of Annex V to that directive, and Article 25(4) of the directive makes the issuance of evidence of a formal qualification as a specialised doctor contingent on possession of evidence of one of those formal qualifications in basic medical training?

Article 2: [...]

[...] [Decision about notifications]

[...]

[Formation of court, dates, signatures and standard formula]