REPORT FOR THE HEARING
in Case E-1/11

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Norwegian Appeal Board for Health Personnel (Statens helsepersonellnemnd) in the case of

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concerning the interpretation of Directive 2005/36/EC and the EEA Agreement.

I Introduction

1. By a decision of 25 January 2011, the Norwegian Appeal Board for Health Personnel ("the Appeal Board") made a request for an Advisory Opinion, registered at the Court on 31 January 2011, in a case pending before it between A ("the Complainant") and the Norwegian Registration Authority for Health Personnel ("Registration Authority" or "RAH").

II Facts and procedure

2. The question referred has arisen in the context of appeal proceedings before the Appeal Board concerning the refusal of the Registration Authority to grant the Complainant automatic recognition of her Bulgarian qualifications as a specialised medical doctor.

3. According to the request to the Court, the Complainant is a Bulgarian national, who is qualified as a medical doctor in Bulgaria with an additional specialisation in psychiatry and extensive experience as a psychiatrist in that EEA State.

4. On 15 May 2009, the Complainant applied for an authorisation "as a medical doctor" in Norway and, in that regard, referred to written confirmation by the Bulgarian authorities that, on the basis of her education and professional experience as a medical doctor in Bulgaria, she was covered by Directive 2005/36/EC.

5. By decision of 12 August 2009, the Registration Authority rejected the application. In its decision, the Registration Authority recognised that although, in principle, the Complainant had a right to an authorisation on the basis of

acquired rights under Article 23 of Directive 2005/36/EC on the recognition of professional qualifications, in its assessment, the Complainant lacked the necessary aptitude under Article 48(3)(c) of the Norwegian Health Personnel Act. In support of that conclusion, the Registration Authority noted that the Complainant had previously been refused approval of her practical training in Norway due to language and communication problems, insufficient theoretical skills and signs of poor insight in her own functioning. At the same time, the Registration Authority considered that there were grounds to grant the Complainant a one-year licence to work as a subordinate medical doctor in accordance with Article 49 of the Health Personnel Act.

6. On 11 September 2009, the Complainant brought an appeal against that decision and the matter was eventually transmitted to the Appeal Board for review on 22 June 2010.

III Question

7. The following question was referred to the Court:

> **Does Directive 2005/36/EC or other EEA law allow the authorities of Member States to apply national rules providing for a right to deny an authorisation as a medical doctor or only to grant a limited authorisation as a medical doctor to applicants with insufficient professional qualifications, to a migrant applicant from another Member State who formally fulfils requirements under Directive 2005/36/EC for a right to mutual recognition of professional qualifications (authorisation as a medical doctor without limitations), when the professional experience of the applicant in Norway has unveiled insufficient professional qualifications?**

IV Legal background

EEA law

8. Article 30 of the EEA Agreement (“EEA”) reads:

> *In order to make it easier for persons to take up and pursue activities as workers and self-employed persons, the Contracting Parties shall take the necessary measures, as contained in Annex VII, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, and the coordination of the provisions laid down by law, regulation or administrative action in the Contracting Parties concerning the taking up and pursuit of activities by workers and self-employed persons.*

9. Annex VII to the EEA, the list provided for in Article 30 EEA, refers at point 1 to Directive 2005/36/EC (“the Directive”) *on the recognition of*

professional qualifications[1] as amended, inter alia, by Council Directive 2006/100/EC of 20 November 2006 *adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania.*[2]

10. Article 2(1) of the Directive reads:

This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.

11. Article 4 of the Directive reads:

Effects of recognition

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.

12. Article 23(1) of the Directive reads:

Acquired rights

1. Without prejudice to the acquired rights specific to the professions concerned, in cases where the evidence of formal qualifications as doctor giving access to the professional activities of doctor with basic training and specialised doctor, as nurse responsible for general care, as dental practitioner, as specialised dental practitioner, as veterinary surgeon, as midwife and as pharmacist held by Member States nationals does not satisfy all the training requirements referred to in Articles 24, 25, 31, 34, 35, 38, 40 and 44, each Member State shall recognise as sufficient proof evidence of formal qualifications issued by those Member States insofar as such evidence attests successful completion of training which began before the reference dates laid down in Annex V, points 5.1.1, 5.1.2, 5.2.2, 5.3.2, 5.3.3, 5.4.2, 5.5.2 and 5.6.2 and is accompanied by a certificate

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[1] OJ 2005 L 255, p. 22.

[2] OJ 2006 L 363, p. 141.

stating that the holders have been effectively and lawfully engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate.

13. Article 25 of the Directive reads:

Specialist medical training

1. Admission to specialist medical training shall be contingent upon completion and validation of six years of study as part of a training programme referred to in Article 24 in the course of which the trainee has acquired the relevant knowledge of basic medicine.

2. Specialist medical training shall comprise theoretical and practical training at a university or medical teaching hospital or, where appropriate, a medical care establishment approved for that purpose by the competent authorities or bodies.

The Member States shall ensure that the minimum duration of specialist medical training courses referred to in Annex V, point 5.1.3 is not less than the duration provided for in that point. Training shall be given under the supervision of the competent authorities or bodies. It shall include personal participation of the trainee specialised doctor in the activity and responsibilities entailed by the services in question.

3. Training shall be given on a full-time basis at specific establishments which are recognised by the competent authorities. It shall entail participation in the full range of medical activities of the department where the training is given, including duty on call, in such a way that the trainee specialist devotes all his professional activity to his practical and theoretical training throughout the entire working week and throughout the year, in accordance with the procedures laid down by the competent authorities. Accordingly, these posts shall be the subject of appropriate remuneration.

4. 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.

5. The minimum periods of training referred to in Annex V, point 5.1.3 may be amended in accordance with the procedure referred to in Article 58(2) with a view to adapting them to scientific and technical progress.

14. Article 51 of the Directive reads:

Procedure for the mutual recognition of professional qualifications

1. The competent authority of the host Member State shall acknowledge receipt of the application within one month of receipt and inform the applicant of any missing document.

2. The procedure for examining an application for authorisation to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months after the date on which the applicant's complete file was submitted. However, this deadline may be extended by one month in cases falling under Chapters I and II of this Title.

3. The decision, or failure to reach a decision within the deadline, shall be subject to appeal under national law.

15. Article 53 of the Directive reads:

Knowledge of languages

Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State.

National law

16. Article 4 of Act No 64 of 2 July 1999 relating to Health Personnel etc. (Lov 2. juli 1999 nr. 64 om helsepersonell m.v – “the Health Personnel Act”) imposes certain requirements upon health personnel concerning due professional care.

17. According to Article 48(2) of the Health Personnel Act, authorisation of an applicant with Norwegian education is contingent on the applicant not being unfit for the profession. However, under Article 49 of the Act, health personnel without a right to authorisation may be granted a licence to work as a medical professional in Norway. This licence may be temporary, limited to a specific position for certain types of health care or restricted in other ways.

18. Under Article 53(2) of the Health Personnel Act, Norwegian authorities may deny an applicant the authorisation, licence, certificate of completion of specialist training, or the right to the interim exercise of the profession of health personnel in Norway without Norwegian authorisation, licence or certificate of completion of specialist training, if there are circumstances which constitute grounds for a revocation pursuant to Article 57 of the Health Personnel Act.

19. Under Article 57 of the Health Personnel Act, a decision of revocation may be adopted where, for instance, the holder is unfit to practise his or her profession in a responsible manner for reasons of gross lack of professional insight or lack of due care.

V Written Observations

20. Pursuant to Article 20 of the Statute of the Court and Article 97 of the Rules of Procedure, written observations have been received from:

- the Czech Government, represented by Martin Smolek and David Hadroušek, acting as Agents,

- the Polish Government, represented by Maciej Szpunar, Undersecretary in the Ministry of Foreign Affairs, acting as Agent,

- the Spanish Government, represented by Juan Manuel Rodríguez Cárcamo, State Advocate (Abogado del Estado) in the Legal Service before the Court of Justice of the European Union ("the ECJ"), acting as Agent,

- the EFTA Surveillance Authority ("ESA"), represented by Xavier Lewis, Director, and Markus Schneider, Officer, Department of Legal & Executive Affairs, acting as Agents, and

- the European Commission ("the Commission"), represented by Hans Støvlbæk and Nicola Yerrell, members of its Legal Service, acting as Agents.

The Czech Government

21. The Czech Government observes that the referring tribunal appears to be in no doubt that the case of A in the main proceedings does not fall within the scope of the principle of automatic recognition established in Article 21 of the Directive. In its view, given the reference date for Bulgaria mentioned in Annex V to the Directive, and the fact that the minimum length of training in the field of psychiatry amounts to 10 years, that conclusion is indeed correct. Consequently, in those circumstances, recognition of professional qualifications must be assessed in the light of Article 23 of the Directive to which the national tribunal itself refers.

22. In this regard, the Czech Government submits that if the Complainant has been able to produce evidence of formal qualifications issued by Bulgaria, her professional qualifications must be recognised, where necessary, by giving direct effect to Article 23 of the Directive. This applies in so far as such evidence attests successful completion of training which began before the relevant reference date laid down in Annex V, and is accompanied by a certificate stating that the Complainant has been effectively and lawfully engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate. In the Government's view, this is without prejudice to Article 53 of the Directive, according to which persons benefiting from the recognition of professional qualifications shall have knowledge of languages necessary for practising the profession in the host Member State.

23. In the opinion of the Czech Government, however, this provision must be interpreted and applied in a manner consistent with the purpose of the Directive and, in the present case, not as to undermine the effectiveness of Article 23 of the Directive. In this regard, the Government refers to the Code of Conduct Approved by the Group of Coordinators for the Directive 2005/36/EC on the Recognition of Professional Qualifications,[3] which identifies as "unacceptable practice", within the ambit of Article 53, practice such as: "(a) making recognition of the qualification subject to linguistics knowledge, unless it belongs to the qualification (e.g. speech therapists); (b) ...; (c) imposing a test systematically".

24. The Czech Government points out that, on the other hand, the Code of Conduct identifies as "best practice", in case of doubt about the accuracy of the qualification or of the document supporting linguistics knowledge, that the competent authority of the host Member State may require confirmation from the authority of the home Member State of the accuracy of the qualification or of the document supporting linguistics knowledge using administrative cooperation.

25. Finally, the Czech Government notes that, where best practice does not apply, the Code of Conduct identifies under the heading "acceptable practice" that the recognition of professional qualifications cannot be subject to linguistics knowledge unless it belongs to the qualifications (e.g. speech therapists). Moreover, the Code states that language requirements must not exceed what is necessary and proportionate for practising the profession in the host Member State. This can only be considered on an individual case by case basis, where, according to the Code, one of the following documents should be considered as sufficient to attest linguistic knowledge: (a) a copy of a qualification acquired in the language of the host Member State; (b) a copy of a qualification attesting knowledge in the language(s) of the host Member State (e.g. university degree, chamber of commerce qualification; qualifications delivered by recognised language institutions like the Goethe Institute, etc.); (c) evidence of previous professional experience in the host Member State territory; (d) if the migrant does not provide evidence under (a) to (c), an appropriate interview or a test (oral and/or written) may be imposed.

26. On this basis, the Czech Government argues that, although Article 53 of the Directive provides national authorities with a certain margin of discretion, this discretion cannot be used to deny the recognition of professional qualifications.

27. In the opinion of the Czech Government, the same can be deduced from the general purpose underlying the provisions on free movement of workers, which is non-discrimination, that is, equal treatment for workers from another Member State. This is reflected in the wording of Article 4(1) of the Directive,

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[3] Available on the internal market website of the Commission at http://ec.europa.eu/internal_market/qualifications/docs/future/cocon_en.pdf.

which states that 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.

28. Therefore, according to the Czech Government, it is clear that, unless professional qualifications equivalent to those held by the Complainant would give a Norwegian national a right to have the job to which the Complainant aspires, she can rely on the Directive to have her professional qualifications recognised in Norway.[4] However, she cannot rely on the Directive to actually obtain a job.[5]

29. In accordance with these observations, the Czech Government proposes that the question of the referring tribunal be answered as follows:

> *Without prejudice to Article 53, which must be interpreted in line with the purpose of Directive 2005/36/EC and in line with the principle of proportionality, Directive 2005/36/EC or any other EEA law does not allow the authorities of Member States to apply national rules providing for a right to deny an authorisation as a medical doctor or only to grant a limited authorisation as a medical doctor to applicants with insufficient professional qualifications, to a migrant applicant from another Member State who formally fulfils requirements under Directive 2005/36/EC for a right to mutual recognition of professional qualifications (authorisation as a medical doctor without limitations), when the professional experience of the applicant in Norway has unveiled insufficient professional qualifications. Directive 2005/36/EC, however, cannot be relied on as the basis for a right actually to be recruited.*

The Polish Government

30. The Polish Government considers that the question before the Court is whether considerations other than the formal confirmation of acquired rights can be taken into account by the authority responsible for issuing the authorisation to exercise the profession of a medical doctor. In particular, the referring tribunal seeks to establish whether the fact that the Complainant demonstrated insufficient professional qualification during her professional experience in Norway can result in a refusal of authorisation.

31. In this connection, the Polish Government wishes to observe that Article 23 of the Directive provides for automatic recognition of professional qualifications subject only to formal examination of documents provided by the

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4 Reference is made, by analogy, to Case C-285/01 *Burbaud* [2003] ECR I-8219, paragraph 91.

5 Reference is made to Case C-586/08 *Rubino* [2009] ECR I-12013, paragraph 27.

applicant. Moreover, Article 23 of the Directive does not allow EEA States to examine the qualifications of the applicant or to apply compensation measures (aptitude test or adaptation period). Consequently, even if the authority responsible for the recognition of qualifications acquired knowledge about the applicant's qualifications in the course of previous proceedings, according to the Polish Government, this fact should not influence the rights acquired under Article 23 of the Directive.

32. As regards A's insufficient language knowledge, mentioned in the request to the Court, the Polish Government observes that, according to Article 53 of the Directive, the requirement of adequate language knowledge applies to persons benefiting from the recognition of qualifications. Consequently, an applicant's language knowledge can only be assessed after the formal recognition of qualifications. As a result, according to the Government, insufficient language knowledge can influence a person's right to exercise a profession but not to have his/her qualifications recognised.

33. Further, the Polish Government submits that EEA States may not subject the recognition of qualifications under Article 23 of the Directive to the condition of sufficient language knowledge, as this provision does not envisage such discretion.[6] In its view, it is irrelevant whether the information about the applicant's language knowledge was obtained from the bodies supervising the applicant's previous practice in the host Member State or from other sources, such as examination prior to recognition. Instead, the whole idea of acquired rights is based on the assumption that persons possessing the required documents have sufficient qualifications and experience to exercise their profession throughout the EEA. Were it possible, in examining the application for recognition of qualifications under Article 23 of the Directive, to take other than formal considerations into account, that assumption would be undermined, rendering the acquired rights useless.

34. The Polish Government also observes that, if the Appeal Board's question were to be answered in the affirmative, another person, possessing exactly the same evidence of formal qualifications as the Complainant, who, however, had not practised in Norway before applying for recognition of acquired rights under Article 23 of the Directive, would be granted the authorisation automatically without having his/her qualifications or language knowledge examined. As a consequence, those two persons, whose rights under the Directive are identical and who have exactly the same qualifications, would obtain different decisions regarding the recognition of qualifications and only one of them would be entitled to exercise the profession of medical doctor independently. According to the Polish Government, the Directive does not allow for such differentiation.

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[6] To this effect, reference is made to Case C-193/05 *Commission* v *Luxembourg* [2006] ECR I-8673, paragraphs 34 to 47.

35. The Polish Government also observes that since A's application for recognition was denied her legal situation has become vague and is no longer determined by the Directive. It notes that Directive 2005/36 does not regulate the situation in which persons who fulfil the formal requirements of Article 23 are denied recognition of qualifications. In particular, there is no provision that allows Member States to apply compensation measures. Correspondingly, the Directive does not include guarantees regarding the legitimate reasons for refusal of authorisation or length of the training period required before the authorisation is granted, similar to those specified in Article 14 of the Directive in connection with compensation measures.

36. Consequently, the Polish Government submits that the decision of Norwegian Registration Authority for Health Personnel to grant the Complainant only a limited licence is completely discretionary and infringes the Directive, depriving Article 23 of its effect. In its view, Article 23 of the Directive specifies an exhaustive list of requirements which have to be fulfilled in order to have professional qualifications recognised. The host EEA State is not allowed to demand proof of qualifications, language knowledge or experience other than as mentioned in that article. According to the Government, this conclusion is confirmed not only by the wording of Article 23 of the Directive, but also by case-law.[7]

37. The Polish Government proposes that the question referred by the Appeal Board be answered as follows:

> *Neither Directive 2005/36/EC nor other EEA law allow the authorities of Member States to apply national rules providing for a right to deny an authorisation as a medical doctor or only to grant a limited authorisation as a medical doctor to applicants with insufficient professional qualifications, to a migrant applicant from another Member State who formally fulfils requirements under Directive 2005/36/EC for a right to mutual recognition of professional qualifications (authorisation as a medical doctor without limitations), when the professional experience of the applicant in Norway has unveiled insufficient professional qualifications.*

The Spanish Government

38. The Spanish Government submits that two separate issues arise in this case as regards the interpretation of Directive 2005/36.

39. The first is the knowledge of languages. Although the Spanish Government acknowledges that the question referred does not include a specific reference to this point, it believes that this is one of the main grounds underlying

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[7] Reference is made Case C-417/02 *Commission* v *Greece* [2004] ECR I-7973, paragraph 19, and Case C-36/08 *Commission* v *Greece* [2008] ECR I-135, paragraphs 12 to 16.

the rejection by the Norwegian authorities of the Complainant's application. Therefore, it respectfully requests the Court to analyse the knowledge of languages as a separate issue, thereby redrafting the question referred.

40. In this regard, the Spanish Government contends primarily that Article 53 of the Directive allows Member States to refuse recognition when the person concerned does not have the necessary knowledge of languages. In its view, on a literal interpretation of Article 53 of the Directive, all rights accorded by the Directive to individuals are conditional on the linguistic knowledge of the person concerned. Given that persons benefiting from the recognition of professional qualifications "shall have a knowledge of languages necessary for practising the profession in the host Member State", EEA States should consequently not recognise the qualifications of persons who do not have this necessary knowledge.

41. The Spanish Government submits further that, from a historical perspective, Article 53 of the Directive constitutes the current version of provisions previously contained in EU Directives on recognition of titles, subsequently repealed by Directive 2005/36. It argues that by way of contrast to Article 20(3) of Directive 93/16/EEC on free movement of doctors[8] a significant change in the wording of the provision can be observed. Under Directive 93/16, Member States only "shall see to it that, where appropriate, the persons concerned acquire, in their interest and in that of their patients, the linguistic knowledge necessary to the exercise of their profession in the host country". However, the current Article 53 goes much further, clearly making the right of the person, and thereby the recognition of his qualifications, conditional on the knowledge of the language, and, thus, allowing for the possibility of a refusal of recognition on this ground alone.

42. The Spanish Government submits that, although Article 53 of Directive 2005/36 has yet to be interpreted by the Union Courts, the interpretation of former versions of the provision was an issue in several cases before the ECJ. In that regard, Advocate General Stix-Hackl took the view that, although language requirements constituted an obstacle to the exercise of the freedoms guaranteed by the Treaty on the Functioning of the European Union ("TFEU"), they could be justified by overriding reasons based on the general interest, such as the reliability of communication with patients as well as administrative authorities and professional bodies.[9]

43. The Spanish Government refers also to *Haim II*[10] which concerned the mutual recognition of diplomas, certificates and other formal qualifications for

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[8] OJ 1993 L 165, p. 1.

[9] Reference is made to the Opinion of Advocate General Stix-Hackl in *Commission* v *Luxembourg*, cited above, point 48.

[10] Case C-424/97 *Haim II* [2000] ECR I-5123.

dentists, under Article 18(3) of Directive 78/686/EEC of 25 July 1978,[11] a predecessor provision to Article 53 of the current Directive. In that case, the Advocate General concluded that in some instances the freedom of movement requires not only possession of a qualification demonstrating what may be called technical knowledge, but also a command of the language or languages of the host State, as Article 18(3) of Directive 78/686 would have no practical effect if a Member State were not able to test for the existence of the necessary linguistic knowledge at any time. In that connection, he observed further that national courts will need to apply the principle of proportionality as regards the level of knowledge which may be required, and that according to that principle, the linguistic knowledge demanded should not exceed the level objectively required to ensure that patients' interests are protected.[12]

44. According to the Spanish Government, that view is broadly supported by the Opinion of Advocate General Jacobs in *Hocsman*[13] on the interpretation of Directive 93/16. In his Opinion, the Advocate General concluded that the ability to communicate accurately and effectively with professional colleagues should be among the criteria to determine the linguistic level of the person concerned.[14] In that regard, he observed that where a person has in fact already been practising in the host Member State for a number of years without displaying any linguistic inadequacy, a language test on the sole basis of which he could be disqualified might well infringe the principle of proportionality.[15] In the view of the Spanish Government, this is a decisive principle which fully applies in the present case. Consequently, where a person has in fact already been practising in the host Member State for a number of years displaying a clear linguistic inadequacy, having regard to Article 53 of the Directive, the competent authorities of the Member States should not recognise that person's qualification under the procedure provided for in Article 23 of the Directive.

45. As regards the case at hand, the Spanish Government indicates that it is apparent from the request to the Court that from February to June 2008 the Complainant "had insufficient understanding of the language which was not compatible with the requirement of due care in the treatment of patients". In April 2009, although she had shown "improved abilities to use and understand Norwegian in dialogue with the patients, relatives and colleagues", she was "still recommended to continue the practices". The refusal of recognition was issued in August 2009. According to the Spanish Government, it should be noted that, notwithstanding that refusal, the Complainant was granted a one-year licence that allowed her to work as a subordinate medical doctor.

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[11] OJ 1978 L 233, p. 1.

[12] Reference is made to the Opinion of Advocate General Mischo in *Haim II*, cited above, points 90 to 101.

[13] Case C-238/98 *Hocsman* [2000] ECR I-6623.

[14] Ibid., Opinion of Advocate General Jacobs, point 56.

[15] Ibid., point 57.

46. In the Spanish Government's view, it may be supposed that, if the Complainant has in fact worked during that period or worked further as a subordinate medical doctor, at some stage her "practical training" should be approved. Even if this is not the case, the system of "practical training" used by the Norwegian authorities appears to be proportionate. A system where the person seeking recognition works in direct contact with patients and colleagues under the control of a medical doctor and where there is a periodic testing of his or her knowledge appears to be even more appropriate to attain the intended aim than the traditional test prior to recognition. Further, in relation to the proportionality test, the Spanish Government stresses the difficulty to imagine an alternative system to replace the "practical training" which is equally effective and, at the same time, has less detrimental effects. On the issue of linguistic knowledge, the Spanish Government concludes that the system of practical training used by the Norwegian authorities appears proportionate to determine the linguistic knowledge of persons who have the right, pursuant to Article 23 of the Directive, to the recognition of their qualification as a doctor. It contends, therefore, that Article 53 of the Directive must interpreted to mean that it allows Member States to refuse the recognition of qualifications due to insufficient linguistic knowledge revealed in such a period of practical training and invites the Court to answer the question accordingly.

47. In the view of the Spanish Government, the second issue is whether the lack of sufficient professional qualifications revealed by the professional experience of the Complainant in Norway constitutes a ground on which to refuse the recognition provided for by Directive 2005/36. In its view, the Directive does not provide any specific legal basis for such refusal.

48. However, the Spanish Government considers that the mere fact that a qualification is recognised does not imply that the person benefiting from it can develop his activity without supervision by the competent authorities. In fact, the activity of a Norwegian doctor, who quite obviously does not need to have his qualifications recognised by the Norwegian authorities, is subject to supervision. In that regard, the Spanish Government notes that, according to Article 48(2) of the Norwegian Health Personnel Act, as set out in the request for an advisory opinion, authorisation of an applicant with Norwegian education is contingent on the applicant not being unfit for the profession.

49. From the perspective of the Spanish Government, a distinction ought to be made between recognition of qualifications and the grant and revocation of an authorisation. In its view, whereas the first issue is covered by the Directive, the second aspect falls directly within the scope of the fundamental freedoms, in particular, Article 49 TFEU. Although a Member State has the obligation under Directive 2005/36 to recognise the qualifications of nationals of other EU Member States, it is under no obligation to allow these nationals to develop their activity without supervision, when its own nationals are subject thereto. In that regard, the Spanish Government stresses that the request for an Advisory Opinion formulates the question for the Court with specific reference to grant of

an authorisation and not recognition of qualifications. Consequently, it contends that the law in need of interpretation here is not Directive 2005/36 but Article 49 TFEU.

50. The Spanish Government emphasises that, according to case-law of the ECJ, national measures which restrict the exercise of fundamental freedoms guaranteed can be justified only if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain that objective.[16]

51. According to the Spanish Government, it would appear from the request to the Court that not only the practical training but also the possibility to revoke an authorisation applies to all doctors in Norway. In fact, it appears that the Complainant was granted a practical training licence before she applied for recognition in accordance with Directive 2005/36. Furthermore, according to the request, the Norwegian legislation provides that authorisations are conditional on applicants not being unfit for the profession. Consequently, in the view of the Spanish Government, the measure satisfies the first condition, as it is not applied in a discriminatory manner.

52. As regards the second condition, the Spanish Government submits that, as confirmed in case-law, the protection of public health is one of the reasons cited in Article 52(1) TFEU as capable of justifying restrictions on the freedom of establishment. Pursuant to Article 61 TFEU, that provision applies to the freedom to provide services. In its view, the denial of an authorisation to an unfit person is covered by this derogation for measures in the general interest as it is aimed at protecting public health.

53. As regards the third condition, the Spanish Government argues that it follows from the facts of the case that the measure is suitable for securing the protection of public health, as the health of patients would be at risk if unfit persons were to treat them.

54. Finally, the Spanish Government submits that the measure does not go beyond what is necessary to ensure such protection. The Complainant has not been prevented from practising medicine. She has been granted a one-year authorisation that allows her to work as a subordinate medical doctor. In the Government's view, therefore, it is a limited measure. Moreover, if the Complainant were to improve her qualifications in the future, she would most probably obtain an authorisation as a medical doctor. Consequently, according to

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[16] Reference is made to Case C-294/00 *Gräbner* [2002] ECR I-6515, paragraph 39; *Haim II*, cited above, paragraph 57; Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 34; and Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37.

the Government, the reversible and limited character of the measure confirms its proportionality.

55. The Spanish Government respectfully invites the Court to answer the question referred as follows:

> *Article 53 of Directive 2005/36 shall be interpreted in the sense that it allows Member States to refuse the recognition of qualifications due to insufficient linguistic knowledge unveiled in a practical training. Article 49 TFEU shall be interpreted in the sense that it allows the authorities of Member States to apply national rules providing for a right to deny an authorisation as a medical doctor or only to grant a limited authorisation as a medical doctor to applicants who fulfil requirements under Directive 2005/36/EC for a right to mutual recognition of professional qualifications (authorisation as a medical doctor without limitations), when the professional experience of the applicant in Norway has unveiled insufficient professional qualifications.*

The EFTA Surveillance Authority

56. ESA notes that the system of recognition of professional qualifications aims to facilitate the pursuit of such professions within the entire European Economic Area.[17] Generally, the Directive obliges any EEA State which regulates a profession to recognise qualifications for pursuit of the same profession obtained in other EEA States upon completion of the respective national education, including any practical training requirements.[18]

57. In ESA's view, the Directive provides for a two-stage approach to the automatic recognition of diplomas of medical doctors in accordance with the principle of minimum harmonisation.[19] First, there is an assessment of the qualification granting *access* to the profession and, second, this is subject to application of the rules governing *the pursuit* of that profession.[20]

58. As regards access to the profession, ESA submits that EEA States retain the competence to require applicants to produce the necessary diplomas. In turn, the national authorities of the host State, in which the applicant intends to work, are obliged to recognise certain diplomas awarded in another EEA State ("home State"). In relation to the pursuit of the profession in the host State, the Directive sets out additional rules in Articles 53 to 55 and Annex VII.

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[17] Reference is made to recital 1 in the preamble to the Directive.

[18] According to Article 3(1)(a) of the Directive, professions are considered "regulated" where by virtue of national laws, regulations or administrative provisions access or pursuit thereof requires the possession of specific professional qualifications.

[19] Reference is made to Chapter III of Title III of the Directive.

[20] Reference is made to Chapter IV of Title III and to Title IV of the Directive.

59. ESA argues that access to and pursuit of a regulated profession are two distinct and separate steps of equal importance. It is only when the conditions under both steps are fulfilled that a migrant doctor is to be granted the right to take up and pursue the specific medical profession in another EEA State.

60. As regards access to the profession of medical doctor in the host State, ESA submits that Chapter III of Title III of the Directive covers eight professions, including that of medical doctor, which is further subdivided into (i) doctors with basic medical training (only) and (ii) specialised doctors, including general practitioners. ESA notes that the designations of qualifications and training courses relevant to those two categories of medical doctors are listed in Annex V to the Directive in the official language or languages of each EEA State concerned.

61. ESA further points out that national designations of qualifications and training courses relating to doctors with basic medical training are listed under subheading 5.1.1. of Annex V, whereas the national designations of qualifications and training courses relating to specialist doctors are indicated under subheadings 5.1.3. and 5.1.4. of Annex V. As not all States have the same specialisations, only those countries which list an entry for a given specialisation have to recognise that specialisation when obtained elsewhere in the EEA. It observes that the content of Annex V is based, in fact, on notifications by the EEA States of the national provisions under which each State issues those formal qualifications.[21] On that basis, ESA, or, in the case of EU Member States, the European Commission, assesses whether the diplomas notified meet the minimum requirements of the relevant qualifications within the meaning of Articles 24, 25 and 28 of the Directive.

62. ESA notes, moreover, that the lists set out under subheadings 5.1.2. to 5.1.4. to Annex V of the Directive specify the national evidence of professional qualification, the body awarding those qualifications and, where applicable, the accompanying certificates, professional titles and reference dates. In ESA's view, only those formal qualifications and relating documents explicitly mentioned in the list concerned are covered by the system of automatic recognition provided for by the Directive.

63. However, according to ESA, those lists reflect the situation in each profession in light of the most recent notification by the EEA State concerned. In practice, any national changes to the designation of the diploma, the body awarding it or professional titles require the holders of older, different diplomas to produce additional documentation issued by the competent authorities of the home State. ESA observes that, according to Article 23(6) of the Directive, all EEA States have to recognise as sufficient proof for EEA nationals, whose evidence of formal qualifications does not correspond to the current entry in Annex V, evidence of that formal qualification when accompanied by a home

[21] Reference is made to Article 21(7) of the Directive.

State document certifying conformity with the minimum requirements under the Directive. According to the same provision, such a certificate must state that the evidence of formal qualifications certifies successful completion of training in accordance with Articles 24, 25 and 28 respectively and is treated by the Member State which issued it in the same way as the qualifications whose titles and diplomas are listed in Annex V.

64. As regards the automatic recognition of diplomas explicitly listed in the Directive, ESA submits that the recognition of medical doctor diplomas is designed to take place automatically and quickly (Article 51) as, in Articles 24, 25 and 28, the Directive harmonises the minimum requirements on education and training to qualify for those professions.

65. In ESA's view, that minimum harmonisation guarantees an agreed level of quality. In addition, the host State neither needs nor is supposed to individually assess qualifications of migrant medical doctors. Thus, according to ESA, if a given diploma is listed in Annex V to the Directive, the minimum requirements under Articles 24, 25 and 28 are deemed to be fulfilled, and the recognition of a professional qualification may not be refused by the host State.

66. On the issue of automatic recognition of diplomas not explicitly listed in the Directive on the basis of acquired rights, ESA argues that, in cases where the minimum requirements under Articles 24, 25 and 28 of the Directive are not met, gaps may be compensated for by evidence of certain professional experience, documented in "certificates of acquired rights" issued by the home State. That procedure allows for the recognition of diplomas which fail to meet the Directive's minimum requirements because, for instance, the training was initiated prior to the harmonisation of EEA minimum standards for education and training.

67. Furthermore, ESA notes that Article 23(1) of the Directive specifies that in cases where the evidence of formal qualifications as medical doctor giving access to the professional activities of doctor with basic training and specialised doctor does not satisfy all the training requirements referred to in Articles 24 and 25, each Member State shall recognise as sufficient proof evidence of formal qualifications issued by those Member States in so far as such evidence attests successful completion of training which began before the reference dates laid down in Annex V, subheadings 5.1.1. and 5.1.2, and is accompanied by a certificate stating that the holders have been effectively and lawfully engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate. It contends that, again, in this situation, no substantive assessment of individual applications may be carried out by the competent authorities of the host State, only a formal check of authenticity of the documents that have been submitted.

68. As regards pursuit of the profession of medical doctor in the host State, ESA notes that, for the actual pursuit of the profession, the host State may, in

addition to recognition of the diploma, call for additional requirements such as proof of good character and financial standing or insurance against financial risk arising from professional liability.[22] In its view, knowledge of the host State language or languages, too, falls under the aspect of pursuit of the profession (see Article 53), unless that proficiency forms part of the qualification itself, as is the case, for example, in relation to speech therapists and language teachers.[23]

69. In addition, ESA notes that once a person has been recognised and authorised to practise in another EEA State he is, of course, subject to the national rules governing the profession, including those on professional conduct or on consumer protection and safety.[24]

70. As regards the situation described in the request for an advisory opinion, ESA bases its proposed reply to the question of the national tribunal on the facts which relate to the Complainant's application of 15 May 2009 for authorisation as a medical doctor, which defines the scope of the main proceedings. However, due to the limited presentation of the factual background in the request to the Court, it is not entirely clear to ESA whether the Complainant seeks recognition as a psychiatrist or another type of doctor. In that respect, ESA notes that the national tribunal simply indicates that "on 15 May 2009 the Complainant applied anew for a Norwegian authorisation as a medical doctor". However, in light of the fact that the Complainant had specialised and practised as a psychiatrist in Bulgaria, ESA interprets the facts to mean that she has applied for an authorisation to practise as a psychiatrist in Norway.

71. ESA submits also that there is a lack of clarity regarding the certificate issued by the Bulgarian authorities which the Complainant produced before the Norwegian authorities. ESA infers that the document in question is a Bulgarian certificate issued pursuant to Article 23(1) of the Directive, confirming that the migrant has effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate (with the consequence of "automatic recognition").

72. In any case, ESA stresses the importance of clearly distinguishing between the two separate stages of the automatic recognition procedure, that is, first, concerning access to the profession and, second, concerning pursuit of that profession. As regards access to the profession of psychiatrist, ESA submits that the profession of psychiatrist is a regulated profession within the meaning of Article 3(1) of the Directive, as it is mentioned under subheading 5.1.3. of Annex V to the Directive. ESA notes that Bulgaria has a title of a profession listed there,

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[22] Reference is made to Article 50(1) of the Directive in conjunction with Annex VII. In addition, ESA notes that Article 50(4) of the Directive specifies that where a host State requires its doctors to take an oath or solemn declaration it has to ensure that an appropriate and equivalent form of oath or declaration is offered to foreign doctors.

[23] Reference is made to point VII of the Code of Conduct, cited above, p. 20.

[24] Reference is made to Article 5(3) of the Directive.

as has Norway, which means that both States acknowledge this specialisation in their respective public health systems. According to Article 25 of the Directive, these specialist titles are contingent upon completion of six years of prior basic medical training (as defined in Article 24) and both theoretical and practical specialist training of together no less than four years at a university or teaching hospital.

73. ESA notes that the reference date for training in relation to Norway is 1 January 1994, when the EEA Agreement entered into force, whereas in relation to Bulgaria the reference date is 1 January 2007, the date of its accession to the European Union. According to ESA, education commenced before these dates does not fulfil these minimum requirements of the Directive and, therefore, these diplomas are not covered by Annex V.[25]

74. ESA notes that, in such a situation, an applicant can provide a "certificate of acquired rights" for the purposes of Article 23(1) of the Directive supporting the diploma issued by the home State as proof of the fact that the applicant has worked as a specialised medical doctor for three out of five years prior to his application for recognition. According to the information provided by the national tribunal, such a certificate was indeed issued by the Bulgarian authorities and submitted by the Complainant to the Norwegian authorities in the context of her latest application. Moreover, ESA notes that the Norwegian authorities appear to accept that the Complainant worked in Bulgaria as a psychiatrist for at least three out of the preceding five years before applying for recognition of her diploma as a psychiatrist in Norway.[26]

75. ESA observes that, where an Article 23(1) certificate can be produced, the host State authorities are not allowed to assess the "quality" of the specialist knowledge of the applicant but have to recognise the evidence of formal qualification on a purely formal basis, that is, they may simply check that the diploma and "certificate of acquired rights" are authentic (see Article 50(2)). ESA argues that the very purpose of the automatic recognition procedure provided for in Article 23 of the Directive is to preclude any additional substantive or individual assessment by the host State.

76. ESA submits, however, that the host State authorities may examine whether an applicant fulfils all the requirements regarding the pursuit of the profession. As regards the alleged lack of language skills of the Complainant, ESA recalls that Article 53 of the Directive requires persons benefiting from the

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[25] ESA understands from the request that the education of the Complainant must have started (long) before 1 January 2007, as she first lodged an application for recognition of her qualifications in Norway on 25 January 2007, having, by then, already gathered extensive professional experience as a psychiatrist in Bulgaria.

[26] ESA notes that while this seems to be correct as regards the first application made by the Complainant on 25 January 2007, it appears to be mathematically implausible with regard to her application of 15 May 2009. In light of the description of facts set out in the request, the Complainant appears to have lived (and mostly worked) in Norway at least since February 2007.

recognition of professional qualifications to have knowledge of languages necessary for practising the profession in the host State. According to ESA, this provision codified earlier case-law of the ECJ on language skills. For example, the ECJ held that the need for effective communication between a dentist and his patient, the administrative authorities and professional organisations was an imperative reason of general interest such as to justify making the admission as a health service dentist subject to linguistic requirements.[27]

77. Thus, according to ESA, the provision allows EEA States to require from applicants certain language skills in order to be allowed to practise a regulated profession. How this linguistic knowledge is assessed is left to the individual interpretation of the EEA States. Nevertheless, the linguistic requirements cannot go beyond the objectives sought to be attained.[28] In addition, the principle of proportionality implies that EEA States cannot demand systematic language exams.[29]

78. In any event, according to ESA, the competent authorities of the host State are allowed to assess the language competence of migrants and may refuse the pursuit of the profession on its territory if an applicant's competence is inferior to the standard which, in their opinion, is necessary to practise the profession. Moreover, so it argues, the authorities may point out to applicants that they could be subject to disciplinary sanctions in the event of fault or negligence due to an insufficient grasp of a language. In ESA's view, it follows that Directive 2005/36 lays down provisions which allow a State to refuse the pursuit of a profession, even where the recognition of the qualification itself has to take place automatically.

79. In the event that, following the automatic recognition of professional qualifications, it becomes apparent during pursuit of the profession in the host State that an individual migrant lacks substantive knowledge of the profession, the competent national authorities may, in ESA's view, apply rules of their national legislation, for example, to require additional training, restrict the authorisation or, in case of professional fault, apply disciplinary sanctions, which may ultimately lead to withdrawal of the authorisation to practise. However, in its view, such an issue falls to be dealt with by national legislation alone subject to the requirement that the principle of non-discrimination is respected so as to ensure that all practising medical doctors are supervised in the same way

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[27] Reference is made to *Haim II*, cited above, paragraph 60.

[28] Reference is made to Case 379/87 *Groener* [1989] ECR 3967, paragraph 21.

[29] Reference is made to *Commission* v *Luxembourg*, cited above, paragraph 47. ESA notes also that in *Groener*, cited above, the ECJ held that the principle of non-discrimination precludes any requirement that the linguistic knowledge in question must have been acquired within the national territory, see paragraph 23 of the judgment. Moreover, to require an evidence of an individual's linguistic knowledge exclusively by means of one particular diploma, such as a certificate issued only in one particular province of a Member State, is discriminatory, see Case C-281/98 *Angonese* [2000] ECR I-4139, paragraph 45.

regardless of where they obtained their qualifications and where they completed their training.

80. If the authorities of the host State learn of a lack of competence of an individual applicant prior to automatic recognition, ESA submits that they must still grant recognition. No additional substantive or individual assessment by the host State of documents to be automatically recognised is permitted under the Directive.

81. ESA stresses the importance of not confusing the procedures for automatic recognition of a specific professional qualification and the procedures which apply in the event of possible aptitude deficits. In its view, where individual inaptitude becomes known to the national authorities of the host State after a doctor has been authorised to practise, they may enforce their national rules immediately in relation to migrant doctors in the same way as they can with regard to domestically trained doctors. Thus, according to ESA, it is for national rules to decide how a person is treated once his professional qualifications have been recognised in the host State. Indeed, in the case at hand, Article 57 of the Norwegian Health Personnel Act allows for severe sanctions in cases where the holder of a medical doctor authorisation is unfit to practise his or her profession in a responsible manner for reasons of gross lack of professional insight or lack of due care.

82. In the light of the above, ESA submits that the Court should answer the question referred by the Norwegian Appeal Board for Health Personnel as follows:

> *As regards access to medical doctor professions, a national authority responsible for the recognition of professional qualifications obtained elsewhere in the EEA must not deny an applicant fulfilling all the criteria required under Directive 2005/36/EC on the automatic recognition of a specific professional qualification his EEA law right to obtain automatic and timely access to the profession in that state.*
>
> *As regards the pursuit of medical doctor professions in the host State, the national authorities may, on the basis of Article 53 of that Directive, require from applicants that they possess inter alia certain language skills.*
>
> *Once automatic recognition of professional qualifications has been granted pursuant to Directive 2005/36/EC, that Directive allows the national authorities entrusted with the supervision of medical doctors to take, if necessary immediately, the necessary measures available under national law to address any individual lack of aptitude to properly perform the duties of a medical doctor provided that any such measures are applied in the same way regardless of where the medical doctors*

obtained their qualifications and where they have completed their training.

The European Commission

83. The Commission argues that Directive 2005/36 on the recognition of professional qualifications is designed to enable persons who have acquired their qualifications in one Member State to have access to that same profession and pursue it in another Member State with the same rights as nationals.[30] Accordingly, the key principle set down in Article 1 is that the host Member State shall recognise professional qualifications obtained in one or more other States "and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession". The Directive applies to all nationals of a Member State wishing to pursue a regulated profession in a Member State other than the one in which the professional qualifications were obtained (Article 2), including the medical profession (see the definition of "regulated profession" in Article 3(l)(a)), and allows the beneficiary to gain access in the host 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" (Article 4(1)).

84. The Commission submits that Chapter III of Title III of the Directive makes provision for recognition on the basis of the coordination of minimum training conditions. In this context, Article 21 lays down the fundamental principle of automatic recognition, which states that each Member State shall recognise evidence of formal qualifications as a doctor giving access to the professional activities of doctor with basic training, and specialised doctor, listed in Annex V, points 5.1.1. and 5.1.2., which states the minimum training conditions referred to in Articles 24 and 25, 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.

85. The Commission observes that Article 21 of the Directive provides further that 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, points 5.1.1. and 5.1.2. It notes that the third subparagraph of that article specifies that the provisions of the first and second subparagraphs do not affect the acquired rights referred to in Articles 23 and 27. In other words, therefore, in the Commission's view, a qualification as a doctor which is listed in Annex V to the Directive is deemed to satisfy the minimum training conditions and must be automatically recognised by the host Member State. With effect from 1 January 2007, this includes the relevant entries for Bulgaria (inserted by Directive 2006/100).

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[30] Reference is made to the third recital in the preamble to the Directive.

86. The Commission notes that Article 23 of the Directive goes on to lay down special transitional rules dealing with the issue of acquired rights. In cases where an applicant successfully completed training which had started before the reference dates in Annex V (namely 1 January 2007 for a doctor undertaking training in Bulgaria), a host Member State must automatically recognise such a qualification if "it is accompanied by certificate stating that the holders have been effectively and lawfully engaged in the activities in question for at least three consecutive years during the five years preceding the award of the certificate" (Article 23(1)).

87. Finally, the Commission observes that Article 53 provides that persons benefiting from the recognition of professional qualifications shall have knowledge of languages necessary for practising the profession in the host Member State. It notes also that, in accordance with Article 30 EEA, the EEA States shall, in order to make it easier for persons to take up and pursue activities as workers and self-employed persons, take the necessary measures contained in its Annex VII concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications. Directive 2005/36 was inserted into point 1 of Section A of Annex VII to the EEA by Decision No 142/2007 of the EEA Joint Committee with effect from 1 July 2009 (i.e. prior to the refusal decision by the Appeal Board of 12 August 2009 concerning the Complainant's most recent application for authorisation, which gave rise to the present request for an advisory opinion).

88. By way of preliminary observation, the Commission notes that, in light of the terms of the request for an advisory opinion, it appears uncontested that Directive 2005/36 applies to the Complainant's case. Although this point is not considered in further detail, the Commission notes that the decision refusing the Complainant authorisation to practise as a doctor in Norway (and which formed the subject of the appeal to the Appeals Board and the present request) was taken on 12 August 2009, a little over a month after the entry into force of Decision No 142/2007 of the EEA Joint Committee which formally inserted Directive 2005/36 into Annex VII to the EEA. In these circumstances, the Commission proposes at this stage of the proceedings to limit its comments to the application and interpretation of Directive 2005/36, although it wishes also to note that the general principles deriving from Directive 2005/36 in relation to doctors were already contained in the predecessor legislation, Directive 93/16/EEC.

89. Second, the Commission observes that it was noted in the refusal decision of August 2009 that the Complainant had "in principle" a right to authorisation on the basis of acquired rights under Article 23 of the Directive. Although this finding is not further explained, it appears clear to the Commission that "the statement" from the Bulgarian authorities referred to on page 3 of the request for an advisory opinion should be understood, therefore, as referring to a certificate of acquired rights within the meaning of Article 23, stating that the Complainant had been "effectively and lawfully engaged" as a doctor "for at least three consecutive years during the five years preceding the award of the certificate".

90. The Commission submits that the key principle set out in Article 21 of the Directive is that of automatic recognition of the qualifications (including those for doctors and specialised doctors) listed in Annex V. Put simply, a State cannot "look behind" the qualification, and question the nature or quality of the training leading to its award, nor impose additional conditions. If a relevant qualification exists, this must be recognised as permitting full access to that profession.

91. The Commission contends that once a doctor has been recognised by virtue of the operation of Article 21 of the Directive he remains subject to the same rights and obligations as a doctor qualified under the system of the host Member State.[31] In its view, identical principles apply in the situation where an individual has acquired rights within the meaning of Article 23. Thus, a Bulgarian doctor such as the Complainant whose training started before the reference date of 1 January 2007 (the date of Bulgarian accession to the European Union) and who provides a certificate of acquired rights must enjoy automatic recognition as a doctor under the system of the host State, with the corollary that (i) the professional requirements referred to, for example, in Article 48 of the Norwegian Health Personnel Act must be deemed to be fulfilled and (ii) no further training periods or periods of limited access to the profession together with further evaluation can be imposed.

92. The Commission argues that a doctor who has been recognised by the host State is entitled, naturally, to pursue his profession, subject to compliance with the requirements for medical practice in that State. In other words, although the principle of mutual recognition ensures that a doctor qualified in Bulgaria and fulfilling the requirements of Article 21 or 23 of the Directive 2005/36 must automatically be recognised as such in Norway, he remains subject to the same obligations as Norwegian doctors in carrying out that profession. By way of example, it appears that Article 53 of the Norwegian Health Personnel Act envisages that authorisation to practise as a doctor may be revoked in cases of misconduct or "gross lack of professional insight". In addition, the Commission emphasises that the recognition of medical qualifications does not create a right to be recruited to a particular post.[32]

93. Finally, the Commission notes that Article 53 of Directive 2005/36 envisages that individuals "benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State". In its view, this provision was broadly inspired by the case-law of the ECJ, and in particular by the judgment in *Haim*.[33]

94. The Commission contends that it follows from the express wording of Article 53 of the Directive that a language requirement cannot be applied as a

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[31] Reference is made to Article 4 of the Directive which refers to the pursuit of the profession "under the same conditions" as the nationals of that State.

[32] Reference is made, by way of analogy, to *Rubino*, cited above, paragraph 27.

[33] Cited above, paragraph 59.

precondition for the recognition of qualifications or for access to the profession in the host Member State. Only in the case of individuals "benefiting" from the recognition of professional qualifications is the knowledge of languages relevant to "practising the profession in the host Member State".

95. Second, any language requirements applied must be necessary and proportionate for the practice of the profession, depending upon the particular circumstances and especially the specific tasks to be carried out.[34] Although this issue was not raised by the Appeals Board in its request for an advisory opinion, for the sake of completeness, the Commission adds that relevant linguistic knowledge could be evidenced by a variety of different means, such as proof of a formal qualification acquired in the language of the host Member State, a specific language qualification obtained, evidence of previous professional experience carried out in the host Member State or, finally, an appropriate interview or test.

96. For the reasons set out above, the Commission considers that the question from the Norwegian Appeals Board for Health Personnel should be answered as follows:

> *1. In the situation where an applicant fulfils the conditions for mutual recognition of professional qualifications as a doctor on the basis of either Article 21 or Article 23 of Directive 2005/36/EC, the national authorities of the host State are precluded from denying such recognition and/or otherwise limiting access to that profession.*
>
> *2. In accordance with Article 53 of Directive 2005/36/EC, proportionate language requirements may be imposed where this is necessary for the exercise of the profession in the host Member State.*

Thorgeir Örlygsson
Judge-Rapporteur

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[34] Reference is made, by way of analogy, to *Haim II*, cited above, paragraph 60.