



## JUDGMENT OF THE COURT

25 March 2021\*

*(Freedom of movement of persons – Directive 2005/36/EC – Recognition of professional qualifications – Access to the profession of psychologist – General system of recognition – Notion of “same profession”)*

In Case E-4/20,

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 Borgarting Court of Appeal (*Borgarting lagmannsrett*), in the case between

**Tor-Arne Martinez Haugland and Others**

and

**The Norwegian Government, represented by the Ministry of Health and Care Services (*Helse- og omsorgsdepartementet*)**

concerning the interpretation of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, in particular Articles 4 and 13, as adapted to the Agreement on the European Economic Area, as well as Articles 28 and 31 of that Agreement,

THE COURT,

composed of: Páll Hreinsson, President, Per Christiansen (Judge-Rapporteur), and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

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\* Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- Tor-Arne Martinez Haugland and others (“Mr Haugland and others”), represented by Per Andreas Bjørgan and Hilde K. Ellingsen, Advocates;
- the Norwegian Government, represented by Torje Sunde and Kaija Bjelland, acting as Agents;
- the Austrian Government, represented by Dr Albert Posch and Julia Schmoll, acting as Agents;
- the Hungarian Government, represented by Miklós Zoltán Fehér and Katalin Szíjjártó, acting as Agents;
- the Netherlands Government, represented by Mielle Bulterman and Joost Hoogveld, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Claire Simpson, Erlend Møinichen Leonhardsen and Carsten Zatschler, acting as Agents; and
- the European Commission (“the Commission”), represented by Lorna Armati and Hans Christian Støvlbæk, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of Mr Haugland and others, represented by Per Andreas Bjørgan and Hilde K. Ellingsen; the Norwegian Government, represented by Kaija Bjelland and Torje Sunde; the Hungarian Government, represented by Katalin Szíjjártó; ESA, represented by Claire Simpson, Erlend Møinichen Leonhardsen and Carsten Zatschler; and the Commission, represented by Lorna Armati, Hans Christian Støvlbæk and assisted by Bernhard Zaglmayer; at the remote hearing on 17 November 2020,

gives the following

## **Judgment**

### **I Legal background**

*EEA law*

- 1 Article 28(1) and (2) of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

1. *Freedom of movement for workers shall be secured among EC Member States and EFTA States.*

2. *Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment.*

2 Article 31(1) EEA reads:

*Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.*

*Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.*

3 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) (“the Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 142/2007 (OJ 2008 L 100, p. 70, and EEA Supplement 2008 No 19, p. 70), which amended Annex VII (Recognition of professional qualifications) and inserted it as point 1 of that annex. Constitutional requirements were indicated by Norway, Iceland and Liechtenstein. The requirements were fulfilled on 14 May 2009 and the decision entered into force on 1 July 2009.

4 The Directive was amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (OJ 2013 L 354, p. 132) (“Directive 2013/55”) which was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 94/2017 (OJ 2019 L 36, p. 52, and EEA Supplement 2019 No 11, p. 62). Constitutional requirements were indicated by Norway, Iceland and Liechtenstein. The requirements were fulfilled on 28 November 2018 and the decision entered into force on 1 January 2019. Accordingly, in the period 1 July 2009 to 1 January 2019 (“the material time”), Directive 2005/36/EC applied in the EEA.

5 Recital 9 of the Directive reads, in extract:

*While maintaining, for the freedom of establishment, the principles and safeguards underlying the different systems for recognition in force, the rules of such systems should be improved in the light of experience. Moreover, the relevant directives*

*have been amended on several occasions, and their provisions should be reorganised and rationalised by standardising the principles applicable. ...*

6 Recital 14 of the Directive reads:

*The mechanism of recognition established by Directives 89/48/EEC and 92/51/EEC remains unchanged. As a consequence, the holder of a diploma certifying successful completion of training at post-secondary level of a duration of at least one year should be permitted access to a regulated profession in a Member State where access is contingent upon possession of a diploma certifying successful completion of higher or university education of four years' duration, regardless of the level to which the diploma required in the host Member State belongs. Conversely, where access to a regulated profession is contingent upon successful completion of higher or university education of more than four years, such access should be permitted only to holders of a diploma certifying successful completion of higher or university education of at least three years' duration.*

7 Recital 15 of the Directive reads:

*In the absence of harmonisation of the minimum training conditions for access to the professions governed by the general system, it should be possible for the host Member State to impose a compensation measure. This measure should be proportionate and, in particular, take account of the applicant's professional experience. Experience shows that requiring the migrant to choose between an aptitude test or an adaptation period offers adequate safeguards as regards the latter's level of qualification, so that any derogation from that choice should in each case be justified by an imperative requirement in the general interest.*

8 At the material time, Article 1 of the Directive, entitled “Purpose”, read:

*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 (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.*

9 At the material time, Article 2(1) of the Directive, entitled “Scope”, read:

*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.*

10 Article 3(1) of the Directive, entitled “Definitions”, reads, in extract:

*For the purposes of this Directive, the following definitions apply:*

- (a) *‘regulated profession’: a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;*
- (b) *‘professional qualifications’: qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience;*
- (c) *‘evidence of formal qualifications’: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Where the first sentence of this definition does not apply, evidence of formal qualifications referred to in paragraph 3 shall be treated as evidence of formal qualifications;*
- ...
- (e) *‘regulated education and training’: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice.*

*The structure and level of the professional training, probationary or professional practice shall be determined by the laws, regulations or administrative provisions of the Member State concerned or monitored or approved by the authority designated for that purpose;*

...

11 At the material time, Article 4 of the Directive, entitled “Effects of recognition”, read:

- 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 At the material time, Article 13(1) and (2) of the Directive, entitled “Conditions for recognition”, read:

1. *If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.*

*Attestations of competence or evidence of formal qualifications shall satisfy the following conditions:*

- (a) *they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;*
- (b) *they shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host Member State, as described in Article 11.*

2. *Access to and pursuit of the profession, as described in paragraph 1, shall also be granted to applicants who have pursued the profession referred to in that paragraph on a full-time basis for two years during the previous 10 years in another Member State which does not regulate that profession, providing they possess one or more attestations of competence or documents providing evidence of formal qualifications.*

*Attestations of competence and evidence of formal qualifications shall satisfy the following conditions:*

- (a) *they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;*

- (b) *they shall attest a level of professional qualification at least equivalent to the level immediately prior to that required in the host Member State, as described in Article 11;*
- (c) *they shall attest that the holder has been prepared for the pursuit of the profession in question.*

*The two years' professional experience referred to in the first subparagraph may not, however, be required if the evidence of formal qualifications which the applicant possesses certifies regulated education and training within the meaning of Article 3(1)(e) at the levels of qualifications described in Article 11, points (b), (c), (d) or (e). The regulated education and training listed in Annex III shall be considered as such regulated education and training at the level described in Article 11, point (c). The list in Annex III may be amended in accordance with the procedure referred to in Article 58(2) in order to take account of regulated education and training which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions.*

13 At the material time, Article 14 of the Directive, entitled “Compensation measures”, read, in extract:

*1. Article 13 does not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if:*

- (a) *the duration of the training of which he provides evidence under the terms of Article 13, paragraph 1 or 2, is at least one year shorter than that required by the host Member State;*
- (b) *the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;*
- (c) *the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State within the meaning of Article 4(2), and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.*

*2. If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.*

...

4. For the purpose of applying paragraph 1 points (b) and (c), ‘substantially different matters’ means matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the migrant shows important differences in terms of duration or content from the training required by the host Member State.

5. Paragraph 1 shall be applied with due regard to the principle of proportionality. In particular, if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first ascertain whether the knowledge acquired by the applicant in the course of his professional experience in a Member State or in a third country, is of a nature to cover, in full or in part, the substantial difference referred to in paragraph 4.

### *National law*

- 14 In Norway, the title “psykolog” (psychologist) is protected under the Health Care Professionals Act (*Lov om helsepersonell (helsepersonelloven) av 2. juli 1999 nr. 64*).
- 15 Under point (t) of Section 48, first paragraph, of the Health Care Professionals Act, authorisation is required in order to practise as a psychologist in Norway. Under point (a) of Section 48 a, first paragraph, and the accompanying regulation, successful completion of the professional training programme in psychology leading to the title cand. psychol. is required to obtain the authorisation.
- 16 According to point (b) of Section 48 a, first paragraph, and Section 52 of the Health Care Professionals Act, authorisation is also granted to persons entitled to recognition under the Directive.
- 17 Persons not entitled to an authorisation may obtain a licence pursuant to Section 49 of the Health Care Professionals Act. A licence is a limited public authorisation allowing for the use of the title “psykolog” within a given framework.

## **II Facts and procedure**

### *Background*

- 18 The proceedings before the referring court have been brought as a class action pursuant to Section 35-6 of the Norwegian Dispute Act (*tvisteloven*) with 163 class members. The class representative pursuant to Section 35-1(7) of the Dispute Act is Mr Haugland.



- 19 Mr Haugland and others have Master's degrees in psychology with a specialisation in "clinical and health psychology" from universities in Hungary. Upon completion of their training, they attained the title "okleveles pszichológus", which entails a Master of Arts ("MA") in psychology ("psychologist with an MA degree"). Mr Haugland and others have not opted to commence further training in Hungary leading to the title "klinikai szakpszichológus" ("clinical psychologist").
- 20 Until the spring of 2016, the Norwegian authorities granted, on the basis of the Hungarian Master's degree, a licence and subsequently authorisation as a psychologist to persons having attained the title of "okleveles pszichológus" in Hungary. According to the request, this practice was based on professional advice to the effect that the training at Eötvös Loránd University, Budapest, Hungary, was aimed at educating clinical psychologists and that they were prepared to take up regular posts in Norway as a psychologist. As the training was one year shorter than the professional training programme in Norway, a licence was granted for a fixed period in order to enable an applicant to complete one year of supervised practice as a psychologist in the specialist healthcare service.
- 21 However, the Norwegian authorities altered their practice of recognition in the spring of 2016. The reason given for this change was that the authorities had received new information about the profession of psychologist in Hungary in an Internal Market Information Report of 30 April 2016. According to the request, in this report, the Hungarian authorities gave the following description of the professions of "okleveles pszichológus" and "klinikai szakpszichológus" in Hungary:

*Psychologist is not a regulated profession in Hungary, but the psychologist qualification entitles to practise many regulated professions, such as family assistant in child welfare services, psychological advisor, methodological consultant, tutor in children temporary homes. Please also note that clinical psychologist 'klinikai szakpszichológus' is a regulated profession in Hungary.*

- 22 In March 2017, in connection with complaint proceedings, a new expert panel considered whether the Master's degree from Hungary was equivalent to the professional psychology training programme in Norway. The panel concluded that the Master's degree from Hungary had significant deviations from the Norwegian professional training programme in psychology (cand. psychol.), and that the deviations could not be remedied through supplementary training and/or supervised practice. However, the expert panel also concluded that the Hungarian Master's programme was comparable to a Norwegian Master's degree in psychology.
- 23 Following the change in practice, candidates holding a Hungarian Master's degree had their applications for a licence as a psychologist rejected. Persons who were already working on the basis of a licence had their applications for authorisation as a psychologist rejected.

- 24 On 14 June 2018, Haugland and others brought proceedings against the Norwegian Government, represented by the Ministry of Health and Care Services, seeking to have the decisions rejecting their applications annulled and to be awarded compensation. They claimed that they were entitled to an authorisation/licence under both national law and under EEA law. The Norwegian Government contended that the complainants were qualified for a profession other than psychologist and that they therefore could not claim access to the profession under the Directive, the main part of the EEA Agreement or national law.
- 25 On 11 November 2019, Oslo District Court found that the profession for which Mr Haugland and others are qualified in Hungary is not the “same profession” as a psychologist in Norway. Thus, their professional qualifications do not give access to the profession of psychologist in Norway under the Directive nor under Articles 28 and 31 of the EEA Agreement. Oslo District Court accordingly concluded that the health authorities’ decisions to refuse the class members authorisations and licences as psychologists in Norway were valid and found in favour of the Norwegian Government. Mr Haugland and others brought an appeal against the judgment to Borgarting Court of Appeal.
- 26 On 12 June 2018, ESA initiated infringement proceedings against Norway on grounds of infringement of the Directive and Articles 28 and 31 EEA. By reply of 26 September 2018, Norway disputed that it had infringed its obligations. ESA delivered a reasoned opinion on 29 April 2020, in which it found that the Norwegian recognition practice for psychologists trained in Hungary is contrary to the EEA Agreement.

*Education and training and the pursuit of the profession of psychologist in Norway*

- 27 In Norway, there are several paths in the field of psychology. A distinction is drawn between the pursuit of the profession as a clinical psychologist (*klinisk psykolog*) and non-clinical posts.
- 28 In order to work as a clinical psychologist, it is necessary to hold an authorisation or licence as a psychologist. However, “clinical psychologist” is not a separate title since clinical treatment belongs to the profession of psychologist. In the preparatory works to the Health Care Professionals Act, the pursuit of the profession as a psychologist is described as follows:

*The pursuit of the profession encompasses analysis, diagnostics and treatment of mental disorders. Psychologists have independent and direct responsibility for patients. The professional role involves risk in relation to mental distress.*

- 29 In addition to clinical work, there are also other relevant non-clinical posts in the field of psychology in Norway, such as in research, consulting, environmental therapy and healthcare institutions, lecturing, human resources and recruitment. These posts are open

both to authorised psychologists and persons having followed other academic programmes in psychology subjects.

- 30 The professional training programme in psychology (*profesjonsstudiet i psykologi*) leads to the academic title “cand. psychol”. The duration of the training programme is six years and is rated at 360 ECTS (European Credit Transfer and Accumulation System) credits (“credits”). It is intended to prepare students to become clinical psychologists.
- 31 No further practice is required in order to obtain authorisation as a psychologist for those who have completed this professional training programme. An individual who has completed the programme is entitled to work independently as a psychologist, as that profession is defined in Norway. This professional training programme is the only programme at a teaching institution in Norway conferring entitlement to authorisation as a psychologist. A psychologist can then opt to specialise as a psychology specialist (*psykologspesialist*) in a given professional field. The further training consists of five years of relevant work in the specialist healthcare service, comprising 256 course hours, supervision by a psychology specialist and scientific work. According to the request, although common, it is not necessary to qualify as a psychology specialist in order to pursue clinical work or to work independently as a psychologist in Norway. In the specialist healthcare service, however, certain tasks must be quality-controlled by a psychology specialist.
- 32 In addition to the professional training programme, the other possible course of study in the field of psychology is to follow one of the various one-year studies, Bachelor’s and Master’s programmes in psychology subjects that are offered by colleges and universities. Bachelor’s programmes are rated at three years (180 credits), whilst a Master’s programme is rated at two years (120 credits). These programmes are more theoretically oriented and do not involve integrated clinical practice.

#### *Education and training and the pursuit of the profession of psychologist in Hungary*

- 33 Basic psychology training in Hungary consists of a three-year Bachelor’s degree (BA) and a two-year Master’s degree, which can be either a Master of Science (MSc) in health psychology or an MA. According to the request, Mr Haugland and others hold the MA degree, which leads to the title “okleveles pszichológus”. The training programme is rated at 300 credits.
- 34 The MA degree offers a generalist platform, but the students choose from among seven different areas of specialisation. Haugland and the other class action members all opted for the specialisation “clinical and health psychology”.
- 35 Hungarian Decree 18/2016 (VIII.5.) sets out the knowledge and skills that graduates of the MA degree shall have. According to that decree, graduate psychologists are intended to have generalist expertise:

*The aim of the training is to educate skilled psychologists who are familiar with several branches of psychology based on their knowledge gained in the different scientific fields of psychology. They know and can apply the methods and tools of psychology in order to recognise and develop individuals, groups or organisations. They have the necessary qualifications in order to obtain further professional certifications in the different fields of psychology defined by special rules and regulations. ...*

- 36 Following completion of the MA degree in psychology, further training may be undertaken in clinical psychology, leading to the title “klinikai szakpszichológus”. The duration of that training is three to four years and includes 400 course hours and relevant professional activity under supervision. The profession of clinical psychologist is a regulated profession in Hungary and the various specialisations coming within clinical psychologist constitute regulated professions under the Directive.
- 37 The parties in the main proceedings disagree on how the training programme to become a clinical psychologist is to be categorised. Mr Haugland and others take the view that it is a specialisation training programme leading to a specialist title, comparable to the Norwegian specialisation training for psychologists to become a psychology specialist. The Norwegian Government, for its part, contends that it is separate training required to practise as a clinical psychologist in Hungary.
- 38 Only a clinical psychologist can provide independent healthcare, whilst a “psychologist with an MA degree” can work in a clinical setting only under supervision in connection with further training, either commenced or planned, pursuant to the Hungarian Decree 60/2003 (X.20.) (“Decree 60/2003”), which further specifies:

*Practising psychological activities in healthcare can be carried out only as follows, irrespective of the form of healthcare activity, including in all cases when a psychologist is required by this regulation:*

*a) independently only by a psychologist with a specialised postgraduate qualification [‘klinikai szakpszichológus’ in Hungarian];*

*b) a psychologist candidate [‘jelölt’ in Hungarian] for a specialised postgraduate qualification under the guidance or close supervision of a psychologist with a specialised postgraduate qualification; or*

*c) a psychologist [‘okleveles pszichológus’ in Hungarian]: under the guidance or close supervision of a psychologist with a specialised postgraduate qualification where they undertake to become a candidate for a specialised postgraduate qualification within two years of their legal relationship regarding the healthcare activity.*

...

*A psychologist or a psychologist candidate for a specialised postgraduate qualification examines (records, analyses) the causes of ill psychological phenomena, the regularities of their progress and their effects on human behaviours. They examine the features and development of the psychological processes of individuals as well as the processes occurring in groups or social situations. Psychotherapy defined by the psychotherapeutic professional directives can be carried out only by a psychologist or a psychologist candidate for a specialised postgraduate qualification and under the supervision of a specialised postgraduate psychotherapist.*

*A psychologist or a candidate for a specialised postgraduate qualification is not entitled to issue a specialist psychological diagnosis. Where patient care necessitates a specialist psychological diagnosis, it is necessary to get a special psychologist's countersignature.*

- 39 According to the request, the parties to the main proceedings agree that the title “okleveles pszichológus” is not a title protected by law or a regulated profession under the Directive. The parties disagree on how much weight is to be attached to the conditions set out in Decree 60/2003 in the determination of whether the Hungarian “okleveles pszichológus” and the Norwegian “psykolog” are the “same profession” for the purposes of the Directive. The parties also disagree on whether “okleveles pszichológus” is a profession or an academic title qualifying its holder for various professions and – assuming it is deemed to be a profession – whether it is the same profession as “klinikai szakpszichológus” under the Directive. The parties further disagree on which activities an “okleveles pszichológus” can perform as compared to a “klinikai szakpszichológus” and on the possible implications this may have for the determination of “same profession”.
- 40 Against this background, Borgarting Court of Appeal decided to stay proceedings and make a request to the Court for an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The request, dated 11 May 2020, was registered at the Court on 25 May 2020.
- 41 Borgarting Court of Appeal has referred the following questions to the Court:
1. *In connection with the assessment of “same profession”, see Articles 1 and 4 of Directive 2005/36/EC, answers are requested to the following questions:*
    - a. *What is the legal assessment and what are the legally relevant factors in the determination of whether a profession in the State where the qualification was obtained and that in the host State constitute the “same profession”?*

- b. *In the determination of “same profession”, must the host State take account of professional activities which the applicant in question may pursue in the State where the qualification was obtained, only under supervision and on the condition that the applicant has commenced a course of further education and training or undertaken to commence such a course of education and training within two years? If so, is it of any consequence that the applicant has opted not to commence or undertake to commence such a course of further education and training?*
  - c. *What importance does differences in degree of independence in pursuing a profession and responsibility for patients have in the determination of whether it is the “same profession”?*
- 2. *Does the possibility of requiring compensation measures, see Article 14 of Directive 2005/36/EC, have any bearing on the interpretation of what constitutes “same profession”? If so, what importance does this have?*
  - 3. *What is the specific legal assessment under Article 3(1)(e) of Directive 2005/36/EC, which provides that regulated education and training must be “specifically geared to the pursuit of a given profession”?*
  - 4. *In connection with Articles 28 and 31 of the EEA Agreement, answers are requested to the following:*
    - a. *Where an applicant does not fulfil the requirements for having qualifications recognised under Article 13 of the Professional Qualifications Directive, read in conjunction with Article 14, may the applicant rely on Articles 28 and 31 of the EEA Agreement as a basis for pursuing the regulated profession in the host State?*
    - b. *If question a is answered in the affirmative, what is then the legally relevant assessment for the examination under Articles 28 and 31?*
- 42 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as it is necessary for the reasoning of the Court.

### III Answer of the Court

#### *Introductory remarks*

- 43 According to Article 1 of the Directive, the purpose of mutual recognition under the Directive is to guarantee that an EEA State – the host State – which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications, recognises professional qualifications obtained in another EEA State – the home State – which allow the holder of the said qualifications to pursue the same profession in that State, for access to and pursuit of that profession in the host State (see Case E-3/20, *Lindberg*, judgment of 25 March 2021, paragraph 41). The effect of mutual recognition as expressed by Article 4 is that the host State must allow an applicant to gain access in that State to the same profession as that for which he is qualified in the home State and to pursue it in the host State under the same conditions as its nationals (see *Lindberg*, cited above, paragraph 42).
- 44 Under Articles 1 and 4 of the Directive, the right to access a regulated profession in the host State presupposes that the beneficiary holds a professional qualification allowing him or her to pursue that profession in the home State. It follows from points (b), (c) and (e) of Article 3(1) that the concept of “specific professional qualifications” in point (a) of that provision does not cover all qualifications attested by evidence of formal qualifications, but only these relating to training which is specifically designed to prepare candidates to exercise a given profession (compare the judgment in *Brouillard*, C-298/14, EU:C:2015:652, paragraph 38).
- 45 According to the system established by the Directive, a professional qualification is not recognised on the basis of the intrinsic value of the education and training to which it attests, but because it gives the right to take up a regulated profession in the EEA State where it was awarded or recognised (compare the judgment in *Colegio*, C-330/03, EU:C:2006:45, paragraph 19). The Directive does not concern the recognition of academic qualifications but relates solely to professional qualifications giving access to regulated professions (compare the judgment in *Commission v Greece*, C-274/05, EU:C:2008:585, paragraph 37).
- 46 It follows from the above, as pointed out by the Commission, that, for the purposes of the Directive, a distinction must be drawn between academic qualifications and professional qualifications. As set out in Article 1 of the Directive, it provides for the recognition of professional qualifications which allow the holder of that professional qualification to pursue a profession in his or her home State. A qualification, whether academic or otherwise, which does not allow a holder of that qualification to pursue a profession in the home State cannot be considered a professional qualification.
- 47 It is for the referring court to assess whether the MA in psychology from Hungary can be considered a professional qualification, and thus whether the Directive applies. As pointed

out by the Commission, the Hungarian MA in psychology appears to be a general academic degree in the field of psychology, and which qualifies an individual for further specialised training towards a profession, but does not in itself appear to constitute a professional qualification. The fact that persons who possess the qualification are entitled to use the title “okleveles pszichológus” is not determinative in this respect. For the sake of completeness, it should be noted that irrespective of the conclusion in this respect as regards the Directive, the answers to Questions 4.a and 4.b will be relevant to the assessment of such qualifications.

*Question 1.a*

- 48 By Question 1.a, the referring court, in essence, seeks guidance on the assessment of whether a profession in the home State and a profession in the host State constitute the “same profession” for the purposes of the Directive.
- 49 It should be noted that “psychologist”, the profession at issue in the main proceedings, is not a profession that falls under the system of automatic recognition under Chapter III of Title III of the Directive. The case does not appear to fall under the system of recognition of professional experience covered by Chapter II of Title III. Therefore, in accordance with Article 10, which provides that all professions not covered by Chapters II and III of Title III come within the scope of Chapter I of Title III, the question of recognition of professional qualifications in the present case is therefore subject to the general system of recognition laid down in Chapter I.
- 50 The general system of recognition is designed to enable the nationals of an EEA State entitled to pursue a regulated profession in one EEA State to take up that profession in other EEA States (compare the judgment in *Commission v Spain*, C-286/06, EU:C:2008:586, paragraph 71). Accordingly, pursuant to Article 13(1) of the Directive, a host State must permit applicants access to and pursuit of a regulated profession, under the same conditions as those that apply to its own nationals, if they possess an attestation of competence or evidence of formal qualifications required by the home State to gain access to and pursue that profession in that State (compare the judgment in *Malta Dental*, C-125/16, EU:C:2017:707, paragraph 39).
- 51 The general system is based on the mutual trust that EEA States have in the professional qualifications that they award. That system essentially establishes a presumption that the qualifications of an applicant entitled to pursue a regulated profession in one EEA State are sufficient for the pursuit of that profession in the other EEA States (compare the judgment in *Commission v Greece*, cited above, paragraph 30). Article 13 is an expression of the principle of mutual recognition of professional qualifications set out in Articles 1 and 4 of the Directive, ensuring that an applicant is granted access to the same profession in the host State which the applicant is qualified for in the home State.



- 52 According to Article 4(1) of the Directive, the recognition of professional qualifications allows the beneficiary to gain access to the same profession as that for which he is qualified in the home State and to pursue it in the host State under the same conditions as its nationals. It follows from Article 4(2) that a profession is considered “the same” if the activities of the profession the applicant is qualified for in the home State are comparable to those of the profession he wishes to pursue in the host State.
- 53 Thus, a profession is characterised by reference to the activity or group of activities members of that profession perform. The expression “that profession” in Article 13(1) of the Directive must be construed as covering professions which, in the home State and the host State, are identical or analogous or in some cases simply equivalent in terms of the activities they cover (compare the judgment in *Malta Dental*, cited above, paragraph 40 and case law cited). As submitted by Mr Haugland and others, the Austrian Government, the Hungarian Government, the Netherlands Government, ESA and the Commission, the professions do not necessarily have to be considered identical.
- 54 Whether a profession in the host State and a profession in the home State can be considered the same profession under the Directive does not depend on a formal comparison of the name or title of that profession, but rather must be determined on the basis of the activities covered by the profession in the home State compared to the activities of the profession which the applicant seeks access to in the host State (compare the judgment in *Malta Dental*, cited above, paragraph 41 and case law cited).
- 55 The question of which professional activities are characteristic of a specific profession is predominantly a question of fact. That question must be resolved by the competent authorities of the host State, subject to review by the national courts, seeking assistance when necessary from the authorities of the home State. If, as in the main proceedings, the profession pursued in the home State is not a regulated profession in that State, within the meaning of point (a) of Article 3(1) of the Directive, reference should be made to the professional activities normally pursued by the members of that profession in that State (compare the judgment in *Toki*, C-424/09, EU:C:2011:210, paragraph 36).
- 56 If the degree of similarity between the activities is such that they may be regarded as the same profession, any shortcomings in the applicants’ education and training in relation to the requirements in the host State may be made up for through the application of compensation measures provided for in Article 14(1) of the Directive, thereby ensuring full integration of the party concerned into the professional system in the host State (compare the judgment in *Colegio*, cited above, paragraph 34).
- 57 In the present case, it falls to the referring court to take account of each of the activities covered by the profession in the home State, compared to the activities of the profession in the host State, in order to determine whether applicants with the title “okleveles pszichológus” are qualified in their home State for the same profession as a “psykolog” in

Norway (compare the judgment in *Malta Dental*, cited above, paragraph 41 and case law cited).

58 In the light of the foregoing, the Court finds that the answer to Question 1.a must be that whether a profession in the host State and a profession in the home State can be considered the “same profession” for the purposes of the Directive must be assessed on a case-by-case basis. That assessment must be based on a comparison between the activities covered by the profession in the home State and the activities of the profession the applicant wishes to pursue in the host State. If the activities covered by the two professions are comparable, in the sense that they are equivalent in terms of the activities they cover, taking into account any relevant differences in the scope and nature of those activities, they must be considered the same profession.

*Question 1.b*

59 By Question 1.b, the referring court asks, in essence, whether, in the assessment of whether two professions are the “same profession” for the purposes of the Directive, the host State must take into account activities which may only be pursued by an applicant in the home State in the context of training and subject to additional conditions, such as supervision.

60 It follows from Article 4(2) of the Directive that two professions are the same if the activities that the applicant is qualified for in the home State are comparable to those of the profession he wishes to pursue in the host State. A professional qualification is recognised under the Directive because it gives the right to take up a profession in the EEA State where the qualification was awarded or recognised (compare the judgment in *Colegio*, cited above, paragraph 19). Recognition is designed to enable a national of an EEA State entitled to pursue a profession in one EEA State to take up that profession in other EEA States (compare the judgment in *Commission v Spain*, cited above, paragraph 71). Accordingly, an applicant must be entitled to pursue the profession in the home State.

61 It follows that recognition of professional qualifications under the Directive is premised on the applicant holding professional qualifications allowing him to pursue the profession in the home State and that he is qualified for access to and pursuit of that profession in that State. This implies that the applicant must be fully qualified for access to and pursuit of that profession in the home State.

62 In circumstances where an applicant is only permitted to pursue certain activities for a limited time in the context of training subject to the condition of committing himself to further studies, it cannot be said that he is fully qualified for the profession consisting of those activities for the purposes of recognition under the Directive. Accordingly, the pursuit of activities in such circumstances cannot be considered the pursuit of a profession within the meaning of the Directive.

63 In the light of the above, the answer to Question 1.b must be that, in determining whether a profession in the home State and a profession in the host State constitute the same profession for the purposes of the Directive, the pursuit of certain activities for a limited time in the context of training subject to the condition of commitment to further studies cannot be considered the pursuit of a profession.

*Question 1.c*

64 By Question 1.c, the referring court enquires, in essence, as to what importance may be ascribed to differences in the degree of independence and responsibility for patients in the assessment of whether two professions are the “same profession” for the purposes of the Directive.

65 ESA and Mr Haugland and others have argued that formal responsibility and the extent to which the applicant can independently pursue the profession in question in the home State is not relevant for assessing whether two professions are the “same profession” within the meaning of the Directive.

66 It follows from Article 4(2) of the Directive that two professions are the same if the activities that the applicant is qualified for in the home State are comparable to those of the profession he wishes to pursue in the host State. As regards the form in which the profession must have been pursued in the home State, it should be observed that the organisational and regulatory framework in which an applicant for recognition pursued the profession in the home State is of no relevance for the purpose of applying the mechanism of recognition provided for by the Directive. As set out in Article 2(1) of the Directive, the Directive applies to any EEA national wishing to pursue a regulated profession in another EEA State on either a self-employed or employed basis. Furthermore, no provision in the Directive states that a profession, which is usually pursued in a self-employed capacity, must have been pursued in a self-employed capacity rather than as an employed person in the home State (compare the judgment in *Toki*, cited above, paragraph 33).

67 However, differences in the degree of independence may be relevant to determining the exact scope or nature of the activities at issue. According to the request for an advisory opinion, and as was noted by the Hungarian Government at the oral hearing, in Hungary, a psychologist or a candidate for a specialised postgraduate qualification is not entitled to issue a specialist psychologist diagnosis, but only a proposal which must then be approved by a qualified professional. Hence, it is, in principle, possible to distinguish between the activity of proposing a diagnosis and the activity of making a definitive diagnosis. Similarly, direct responsibility for patients may be distinguished from subsidiary responsibility for patients, in particular, where a profession is only permitted to participate in such activities under the responsibility and direction of another profession.

68 Accordingly, the Court finds that the answer to Question 1.c must be that differences in the degree of independence and patient responsibility may be relevant to determining the exact

scope or nature of activities when assessing whether two professions are the “same profession” for the purposes of the Directive.

*Question 2*

- 69 By Question 2, the referring court, in essence, asks whether the possibility of requiring compensation measures under Article 14 of the Directive has any bearing on the assessment of what constitutes the “same profession”.
- 70 Article 14(1) of the Directive provides that Article 13 does not preclude the host State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test, in certain situations. It is for the host State to decide if such compensation measures are required in the situations specified in Article 14(1).
- 71 The aim of Article 14 of the Directive is that, in the absence of harmonisation of the minimum training conditions for access to and pursuit of the professions governed by the general system, it should be possible for the host State to impose a compensation measure, as also noted in recital 15. Such measures must be proportionate and, in particular, take account of the applicant's professional experience. Such compensation measures relate to discrepancies in the applicant's education or training compared to that required in the host State. As pointed out by ESA, this is a consequence of the fact that the conditions for access to and pursuit of professions, as well as the education and training geared towards them, differ between EEA States.
- 72 It follows from the wording of Article 14(1) and the scheme of the Directive that for compensation measures to be relevant, it is a prerequisite that Article 13 is applicable. Accordingly, it is first necessary to determine whether two professions are the “same profession” within the meaning of Articles 4(2) and 13(1). It is only after a finding that two professions are the “same profession” that any shortcomings in the applicant's education and training in relation to that required in the host State may be effectively made up for through the application of the compensation measures provided for in Article 14(1) (compare the judgment in *Nasiopoulos*, C-575/11, EU:C:2013:430, paragraph 31). Accordingly, the possibility of requiring compensation measures under Article 14 cannot have any bearing on the determination of whether two professions are the “same profession”.
- 73 The Court finds that the answer to Question 2 must be that the possibility of requiring compensation measures under Article 14 of the Directive cannot have any bearing on the interpretation of the “same profession” for the purposes of Article 13.

*Question 3*

- 74 By its third question, the referring court, in essence, seeks guidance on the interpretation of point (e) of Article 3(1) of the Directive, which provides that regulated education and training must be “specifically geared to the pursuit of a given profession”.
- 75 Point (e) of Article 3(1) defines the term “regulated education and training” as “any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice”.
- 76 The wording “specifically geared” entails that training must be specifically designed to prepare candidates to exercise a given profession. This entails that qualifications that give access to a wide range of professions, or attest, inter alia, merely academic competence within a given field, and which do not aim to qualify holders for a certain profession cannot be considered as specifically geared to the pursuit of a given profession (compare the judgment in *Brouillard*, cited above, paragraphs 38 to 40).
- 77 Accordingly, the Court finds that the answer to Question 3 must be that point (e) of Article 3(1) of the Directive must be construed as covering training that is specifically designed to prepare candidates to exercise a given profession. The provision does not cover qualifications that give access to a wide range of professions, or attest, inter alia, merely academic competence within a given field.

*Question 4.a*

- 78 By Question 4.a, the referring court, in essence, asks whether applicants who do not fulfil the requirements for having qualifications recognised under the Directive may rely on Articles 28 and 31 EEA as a basis for pursuing a regulated profession in the host State.
- 79 The Norwegian Government has argued that there is no room for recognising professional qualifications under the main part of the EEA Agreement following the introduction of the Directive. It argues that recognition of professional qualifications as a psychologist is harmonised under the general system of recognition under the Directive. An applicant may only rely on the main part of the EEA Agreement where the relevant profession and qualification are not covered by the Directive.
- 80 However, as the Court held in *Lindberg*, Articles 28 and 31 EEA must be interpreted as requiring a host State to carry out an individual assessment of the knowledge and training attested by the qualifications of an applicant. This applies in a situation not covered by the Directive but also where the applicant does not satisfy the conditions for recognition of professional qualifications under the Directive (see *Lindberg*, cited above, paragraphs 61 and 62, and case law cited).

- 81 The right to recognition of diplomas is an expression of the fundamental right to freedom of establishment. Failure to recognise learning, skills and qualifications acquired by the person concerned in another EEA State can serve as a barrier to the free movement and the establishment of EEA professionals, even when national rules are applied in an indiscriminate manner in relation to nationality. Therefore, the host State cannot disregard knowledge and qualifications obtained in other EEA States (see *Lindberg*, cited above, paragraph 55 and case law cited).
- 82 Further, there is no indication in the Directive itself that it was intended to limit the exercise of fundamental freedoms in the EEA Agreement, as they had been interpreted in the context of the predecessor directives on recognition of professional qualifications. On the contrary, as expressed in recitals 9 and 14, the Directive's aim is to reorganise and rationalise the application of the predecessor directives on the recognition of professional qualifications and thus support the free movement and establishment of professionals. As expressed in Article 1, the objective of the Directive is to facilitate the mutual recognition of professional qualifications. It is not the purpose of the Directive to make recognition of qualifications more difficult in situations falling outside its scope, nor may it be interpreted to have such an effect. Recognition under the Directive thus complements the rights guaranteed under the main part of the EEA Agreement, but does not displace an assessment under those provisions (see *Lindberg*, cited above, paragraphs 58 and 59 and case law cited).
- 83 Therefore, in cases where the conditions for recognition of professional qualifications under the Directive are not met, a right to recognition of qualifications may be derived from the EEA Agreement's provisions on free movement of workers and freedom of establishment as regards self-employed persons. This applies both to cases where a person seeks authorisation in the host State to pursue a profession in a situation not covered by the Directive and where the applicant does not satisfy the conditions for recognition of professional qualifications under the Directive (see *Lindberg*, cited above, paragraph 61 and case law cited).
- 84 In the light of the foregoing, the Court finds that the answer to Question 4.a must be that applicants who do not fulfil the requirements for recognition of professional qualifications under the Directive may rely on Articles 28 and 31 EEA as a basis for pursuing a regulated profession in the host State.

*Question 4.b*

- 85 By Question 4.b, the referring court asks, in essence, for guidance on the relevant legal assessment for evaluating qualifications under Articles 28 and 31 EEA.
- 86 It follows from the case law of the Court of Justice of the European Union that the authorities of an EEA State must take into account all the applicant's diplomas, certificates, other evidence of qualifications, and relevant experience, when they compare the

qualifications and experience held by the applicant with the knowledge and qualifications required by the national legislation for access to the relevant profession. This exercise is not intended to result in recognising any particular diploma or certificate as equal to a corresponding national qualification, but rather to assess the degree of correspondence between qualifications already obtained by the applicant and the qualification required by the host State. The host State must therefore examine the qualification and the specific content of the training (see *Lindberg*, cited above, paragraph 64 and case law cited).

- 87 The assessment must enable the authorities of the host State to assure itself on an objective basis that a foreign diploma certifies that the knowledge and qualifications are, if not identical, at least equivalent to those attested by the national diploma. That assessment must be based exclusively on the level of knowledge and qualifications which its holder can be assumed to possess, having regard to the nature and duration of the studies and practical training to which the diploma relates. In the course of the comparative examination, an EEA State may take into consideration objective differences relating to both the legal framework of the profession in question in the home State and to its field of activity (see *Lindberg*, cited above, paragraph 65 and case law cited).
- 88 If the knowledge and qualifications attested by the foreign diploma correspond to those required by the national provisions, the host State must recognise that diploma as fulfilling the requirements laid down by its national provisions. On the other hand, if the knowledge and qualifications attested by the foreign diploma only partially correspond to the requirements under the national provisions, the host State may require the applicant to show that he has acquired the knowledge and qualifications which are lacking.
- 89 In that regard, it is for the competent national authorities to assess whether the knowledge acquired in the host State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking (see *Lindberg*, cited above, paragraph 67 and case law cited).
- 90 In so far as practical experience in the pursuit of related activities can increase an applicant's knowledge, it is incumbent on the competent national authorities to take practical experience relevant for the profession that the applicant seeks access to into consideration. It is for the competent national authority to determine the value of such experience based on the specific functions, knowledge acquired and applied in pursuit of those functions, responsibilities assumed and the level of independence accorded to the applicant (see *Lindberg*, cited above, paragraph 68 and case law cited).
- 91 If the competent national authorities find that the applicant's knowledge and qualifications attested by the diploma and relevant professional experience are not equivalent, or only partially correspond to those required by the host State, the host State must specify what training the applicant lacks in order for the applicant to complete or supplement the training. A different interpretation of Articles 28 and 31 EEA would not be capable of

facilitating the effective exercise of the fundamental freedoms guaranteed by the EEA Agreement (see *Lindberg*, cited above, paragraph 69 and case law cited).

- 92 In the light of the foregoing, the Court finds that the answer to Question 4.b must be that a host State must compare all diplomas, certificates and other evidence of formal qualifications and professional experience of the applicant with its own requirements to pursue the profession in question. If the applicant's knowledge and qualifications attested by the diploma and relevant professional experience are not equivalent, or only partially correspond to those required, the host State must specify which training is lacking in order for the applicant to complete or supplement the training.

#### **IV Costs**

- 93 The costs incurred by the Austrian Government, the Hungarian Government, the Netherlands Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.



On those grounds,

THE COURT

in answer to the questions referred to it by Borgarting Court of Appeal gives the following Advisory Opinion:

- 1. Whether a profession in the host State and a profession in the home State can be considered as the “same profession” for the purposes of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications must be assessed on a case-by-case basis. That assessment must be based on a comparison between the activities covered by the profession in the home State and the activities of the profession the applicant wishes to pursue in the host State. If the activities covered by the two professions are comparable, in the sense that they are equivalent in terms of the activities they cover, taking into account any relevant differences in the scope and nature of those activities, they must be considered the same profession for the purposes of Directive 2005/36/EC.**

**In determining whether a profession in the home State and a profession in the host State constitute the same profession for the purposes of Directive 2005/36/EC, the pursuit of certain activities for a limited time in the context of training subject to the condition of commitment to further studies cannot be considered the pursuit of a profession.**

**Differences in the degree of independence and patient responsibility may be relevant in determining the exact scope or nature of activities when assessing whether two professions are the “same profession” for the purposes of Directive 2005/36/EC.**

- 2. The possibility of requiring compensation measures under Article 14 of Directive 2005/36/EC cannot have any bearing on the interpretation of the “same profession” for the purposes of Article 13 of that directive.**
- 3. The expression “specifically geared to the pursuit of a given profession” in point (e) of Article 3(1) of Directive 2005/36/EC must be construed as covering training that is specifically designed to prepare candidates to exercise a given profession. It does not cover qualifications that give access to a wide range of professions, or attest, inter alia, merely academic competence within a given field.**

- 4. Applicants who do not fulfil the requirements for recognition of professional qualifications under Directive 2005/36/EC may rely on Articles 28 and 31 EEA as a basis for pursuing a regulated profession in the host State.**

**In the assessment of qualifications under Articles 28 and 31 EEA, the host State must compare all diplomas, certificates and other evidence of formal qualifications and relevant professional experience of the applicant with its own requirements to pursue the profession in question. If the applicant's knowledge and qualifications attested by the diploma and relevant professional experience are not equivalent, or only partially correspond to those required, the host State must specify which training is lacking in order for the applicant to complete or supplement the training.**

Páll Hreinsson

Per Christiansen

Bernd Hammermann

Delivered in open court in Luxembourg on 25 March 2021.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President