Reports of Cases

OPINION OF ADVOCATE GENERAL
MACIEJ SZPUNAR
delivered on 5 November 2014[1]

Case C-477/13

Eintragungsausschuss bei der Bayerischen Architektenkammer
v
Hans Angerer

(Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany))

(Freedom of movement of persons — Freedom of establishment — Directive 2005/36/EC — Recognition of professional qualifications — Access to the profession of architect — Migrant holding a diploma not listed in Annex V, point 5.7, to Directive 2005/36/EC — Article 10 — Meaning of 'specific and exceptional reasons' — Concept of 'architect')

Introduction

1. Article 10 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications[2] sets out the scope of a general system for the recognition of evidence of training. In the present reference for a preliminary ruling, the Court is for the first time asked how a number of terms of this article are to be interpreted and what their normative value is. The Bundesverwaltungsgericht (Federal Administrative Court) (Germany), seised of an appeal on a point of law (Revision), wonders whether the interpretation given by the two lower courts in the present case is correct.

2. The opposing parties in the present case are Mr Angerer, who has obtained the qualification of 'planender Baumeister' (master builder/planning and technical calculation) in Austria, and the Eintragungsausschuss bei der Bayerischen Architektenkammer (Registration Committee of the Bavarian Chamber of Architects, 'the Registration Committee'). Mr Angerer wishes to be enrolled in the Bavarian order of architects, which the Registration Committee refuses.

3. The case at issue is not about whether Mr Angerer fulfils the substantive criteria under Directive 2005/36 enabling him to practice as an architect in Germany. It is solely concerned with the question whether the German authorities and courts are allowed to apply the general system of recognition of evidence of training in Directive 2005/36 to the case at issue or whether the terms of Article 10 of Directive 2005/36 could prevent them from doing so.

4. My assessment leads me to the answer that the German authorities and courts can apply this part of Directive 2005/36. The proposal I make to the Court is that Directive 2005/36 should be interpreted in a manner consistent with the rationale of the internal market and the fundamental Treaty provisions on freedom of establishment.

1 — Original language: English.
2 — OJ 2005 L 255, p. 22.

Legal framework

European Union law

5. Directive 2005/36 is divided into six titles: general provisions (I), free provision of services (II), freedom of establishment (III), detailed rules for pursuing the profession (IV), administrative cooperation and responsibility towards citizens for implementation (V) and other provisions (VI).

6. Title III on freedom of establishment in turn contains four chapters: general system for the recognition of evidence of training (I), recognition of professional experience (II), recognition on the basis of coordination of minimum training conditions (III), and common provisions on establishment (IV).

7. Article 10 of Directive 2005/36, to be found in Title III, Chapter I, is worded as follow:

'This Chapter applies to all professions which are not covered by Chapters II and III of this Title and in the following cases in which the applicant, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:

(a) for activities listed in Annex IV, when the migrant does not meet the requirements set out in Articles 17, 18 and 19;

(b) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the migrant does not meet the requirements of effective and lawful professional practice referred to in Articles 23, 27, 33, 37, 39, 43 and 49;

(c) for architects, when the migrant holds evidence of formal qualification not listed in Annex V, point 5.7;

(d) without prejudice to Articles 21(1), 23 and 27, for doctors, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists and architects holding evidence of formal qualifications as a specialist who must have taken part in the training leading to the possession of a title listed in Annex V, points 5.1.1, 5.2.2, 5.3.2, 5.4.2, 5.5.2, 5.6.2 and 5.7.1, and solely for the purpose of the recognition of the relevant specialty;

(e) for nurses responsible for general care and specialised nurses holding evidence of formal qualifications as a specialist who have taken part in the training leading to the possession of a title listed in Annex V, point 5.2.2, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by specialised nurses without training as general care nurse;

(f) for specialised nurses without training as general care nurse, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by nurses responsible for general care, specialised nurses without training as general care nurse or specialised nurses holding evidence of formal qualifications as a specialist who have taken part in the training leading to the possession of the titles listed in Annex V, point 5.2.2;

(g) for migrants meeting the requirements set out in Article 3(3).'

German law

8. In Germany, the law on architects comes within the legislative remit of the Länder (regions) (Article 70(1), Basic law (Grundgesetz)). The requirements of eligibility and registration in the roll of architects of the Bavarian Chamber of Architects are set out in Article 4 of the Law on the Bavarian Chamber of Architects and the Bavarian Chamber of Building Engineers (Gesetz über die Bayerische Architektenkammer und die Bayerische Ingenieurekammer-Bau (GVBl. p. 308)), last amended by the Law of 11 December 2012 (GVBl. p. 633) ('the BauKaG'). This article stipulates the following:

'(1) The roll of architects shall be administered by the chamber of architects.

(2) Any person who:

1. has a place of residence, place of business or main professional employment in Bavaria,

2. has passed the final examination in a course

   (a) with at least four years' regular length of study in the tasks listed in Article 3(1) in the field of architecture (structural engineering) or

   (b) with at least three years' regular length of study in the tasks listed in Article 3(2) and (3) in the fields of interior or landscape architecture at a German university, at a German public or officially recognised school for engineers (Akademie) or at a German educational establishment equivalent to these, and

3. has completed at least two years' post-qualification practical experience in the relevant field

shall be registered in the roll of architects. In determining the required period of practical experience, advanced and further vocational education programmes of the Chamber of Architects in the tasks of technical and economic planning and construction law shall be taken into account.

(3) …

(4) The requirement under paragraph 2(2)(a) above is also satisfied by a person who can produce equivalent evidence of having successfully completed a course of study at a foreign university or other foreign establishment. For nationals of a Member State of the European Union or of a State party to the Agreement on the European Economic Area, equivalent evidence shall include evidence of formal qualifications of types published or recognised as sufficient pursuant to Articles 21, 46 and 47 of 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, corrected by OJ 2007 L 271, p. 18, OJ 2008 L 93, p. 28, OJ 2009 L 33, p. 49), last amended by Commission Regulation (EU) No 623/2012 of 11 July 2012 (OJ 2012 L 180, p. 9), in combination with Annex V, point 5.7.1, thereto, as well as evidence pursuant to Articles 23 and 49 of Directive 2005/36/EC in combination with Annex VI, point 6, thereto. …

(5) The requirements under paragraph 2(2)(a) and (3) above are also satisfied where a national of a Member State of the European Union or of a State Party to the Agreement on the European Economic Area does not, for specific and exceptional reasons within the meaning of Article 10(b), (c), (d) and (g) of Directive 2005/36/EC, fulfil the requirements for recognition of his evidence of formal qualifications on the basis of coordination of minimum training conditions within the meaning of Directive 2005/36/EC, if moreover the requirements of Article 13 of Directive 2005/36/EC are satisfied; in that respect training courses are treated equally for the purposes of Article 12 of Directive 2005/36/EC. … Sentence 1 shall apply mutatis mutandis to persons who have been authorised to use the professional title of architect pursuant to a law which gives the competent authority of a Member

State of the European Union or of a State party to the Agreement on the European Economic Area the power to award that title to nationals of Member States of the European Union or of States of the European Economic Area who are especially distinguished by the quality of their work in the field of architecture.

…'

Facts, procedure and questions referred

9. Mr Angerer, a German national with private residences both in Germany and Austria, has practised, since 1 March 2007, in Austria as 'planender Baumeister', further to passing a corresponding qualification examination under Austrian law.

10. The qualification of 'planender Baumeister' does not enable him to practice as an architect in Austria.

11. Moreover, the qualification of 'planender Baumeister' does not exist in Germany.

12. On 25 April 2008, Mr Angerer applied for registration in Bavaria on the roll of architects under Article 4 of the BauKaG. On 11 June 2008,[3] he changed his application to an application for registration on the roll of foreign service providers under Article 2 of the BauKaG.[4] This application was refused by the Registration Committee by decision of 18 June 2009.

13. Mr Angerer challenged this rejection decision before the Bayerisches Verwaltungsgericht München (Bavarian Administrative Court, Munich). The latter, by judgment of 22 September 2009, annulled the rejection decision of 18 June 2009 and ordered the Registration Committee to register Mr Angerer, in accordance with Article 2 of the BauKaG, on the roll of foreign service providers.

14. The Registration Committee appealed against this judgment before the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court). In the appeal proceedings, at the suggestion of the court, Mr Angerer amended his claim with the consent of the Registration Committee to the effect that he be registered in the roll of architects.

15. The appeal court granted this amended claim in a judgment of 20 September 2011 and dismissed the Registration Committee's appeal subject to the proviso that the latter was required to come to a positive decision on the registration of the applicant as a freelance architect (structural engineering) in the roll of architects. The court states in its reasoning that the requirements for the requested registration in the roll of architects, in accordance with Article 4(5) of the BauKaG, as read with the rules referred to therein contained in Articles 10(c), 11 and 13 of Directive 2005/36, were satisfied.

16. The Registration Committee appealed against that judgment on a point of law (Revision) to the Bundesverwaltungsgericht. It requests the variation of the judgment of 20 September 2011 of the Bavarian Higher Administrative Court and the judgment of 22 September 2009 of the Bavarian Administrative Court (Munich) and the dismissal of the action.

3 — See Bayerisches Verwaltungsgericht München, judgment of 22.09.2009 – M 16 K 09.3302, p. 2.

4 — This change was made further to contacts between Mr Angerer and the Registration Committee, during which the latter signalled that Mr Angerer would not qualify for registration as architect, see Verwaltungsgerichtshof Bayern, judgment of 20.09.2011 – 22 B 10.2360, at point 15, available at: http://openjur.de/u/493661.html.

17. The Bundesverwaltungsgericht takes the view that the resolution of the dispute before it requires an interpretation of Directive 2005/36. By order of 10 July 2013, received at the Court Registry on 5 September 2013, it decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) (a) Are “specific and exceptional reasons” within the meaning of Article 10 of the directive the circumstances defined in the categories that follow (numbered (a) to (g)), or must in addition to these circumstances “specific and exceptional reasons” be given why the applicant does not satisfy the conditions laid down in Chapters II and III of Title III of the directive?

(b) In the latter case, of what sort must the “specific and exceptional reasons” be? Must they be personal reasons – such as reasons relating to the individual’s curriculum vitae – why the migrant does not, exceptionally, satisfy the conditions for automatic recognition of his training under Chapter III of Title III of the directive?

(2) (a) Does the concept of architect within the meaning of Article 10(c) of the directive require that the migrant in the Member State of origin, beyond carrying out the technical activities of construction planning, construction supervision and actual construction, has also or could also have, after his training, carried out creative, urban planning, economic and possibly historic building conservation activities, and if so to what extent?

(b) Does the concept of architect within the meaning of Article 10(c) of the directive require the migrant to have a university-level education, of which the principal component is architecture, meaning that it goes beyond technical matters of construction planning, construction supervision and actual construction, and also covers creative, urban planning, economic and possibly historic building conservation matters, and if so to what extent?

(c) (i) Do the answers to (a) and (b) depend on how the professional title of “architect” is normally used in other Member States (Article 48(1) of the directive);

(ii) or is it sufficient to establish how the professional title of “architect” is normally used in the Member State of origin and in the host Member State;

(iii) or can the spectrum of activities normally associated with the professional title of “architect” in the territory of European Union be derived from Article 46(1), paragraph 2, of the directive?’

18. Written observations were submitted by the parties in the main proceedings, which includes the Landesanwaltschaft Bayern, and the German, Dutch and Romanian Governments, and the Commission. The parties in the main proceedings, which includes the Landesanwaltschaft Bayern, the German Government and the Commission also submitted oral observations at the hearing on 9 July 2014.

Assessment

Preliminary remarks

Directive 2005/36

19. The relevant provisions of Directive 2005/36 have already been cited above. In order to understand what is (and what is not) at stake in the present case, I think it necessary to outline the different systems of recognition of professional qualifications contained in the directive.

20. Directive 2005/36 was adopted by the Council of the European Union on 6 June 2005 by qualified majority.[5] It is based on specific internal market legal bases in the Treaty.[6] It repeals 15 former directives in the field of recognition of professional qualifications[7] and reorganises and rationalises their provisions by standardising the principles applicable.[8] In its Title III, Directive 2005/36 provides for three systems of recognition: automatic recognition for professions for which the minimum training conditions have been harmonised (Chapter III) ('the automatic system'); recognition on the basis of professional experience for certain professional activities (Chapter II), and a general system for other regulated professions and professions which are not covered by Chapters II and III or in respect of which, subject to Article 10 of Directive 2005/36, the applicant does not satisfy the conditions laid down in Chapters II and III (Chapter I) ('the general system').

21. For the purposes of the present case, the automatic and the general system should be described in more detail.

22. Title III, Chapter III, of Directive 2005/36 essentially sets up a vertical approach of harmonisation, profession by profession, for a number of specifically listed professions, such as architects.[9] The principle underlying this chapter is straightforward: if a person is in possession of a formal qualification listed in Annex V to the directive and if certain minimum requirements are met, a Member State has to recognise evidence of formal qualification and has, for the purposes of access to and pursuit of the professional activity, to give such evidence of formal qualification the same effect on its territory as the evidence of formal qualification which it itself issues. A person who wants to practice the profession of architect must, by virtue of Article 21 of Directive 2005/36, thus be in possession of a formal qualification listed in Annex V, point 5.7, to the directive and must satisfy the minimum training conditions referred to in Article 46 of the directive. In this respect, the Court has held that the system of automatic recognition, as regards the profession of architect, in Articles 21, 46 and 49 of Directive 2005/36 leaves Member States no discretion.[10]Recognition on the basis of Title III, Chapter III, is therefore automatic. Once a person fulfils the criteria, Member States have no choice but to admit him/her to the profession concerned.

5 — See Council press release of 6 June 2005 (9775/05 (Presse 137)), available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/85121.pdf. The directive was adopted with the German and Greek delegations voting against it. Luxembourg abstained.

6 — Articles 40 EC (now 46 TFEU) – freedom of movement for workers, 47 EC (now 53 TFEU) – right of establishment, and 55 EC (now 62 TFEU) – freedom to provide services.

7 — See Article 62 of Directive 2005/36.

8 — See recital 9 to Directive 2005/36.

9 — The directive more or less maintains the previous legal situation while repealing Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15).

10 — See judgment in *Ordre des architectes* (C-365/13, EU:C:2014:280, paragraph 24).

23. Title III, Chapter I, of Directive 2005/36 sets up a general system, modelled on the previous general directives,[11] as a fallback.[12] As a rule, it applies only to those professions to which the automatic system does not apply, as can be inferred from Article 10 of Directive 2005/36. As an exception to this rule, Article 10 also stipulates that the general system applies in a number of cases in which the applicant, 'for specific and exceptional reasons', does not satisfy the conditions laid down in Title III, Chapters II and III. The material requirements of the general system are laid down in Article 11 et seq. of the directive.

Factual and legal context of the questions referred

24. The order for a preliminary reference is limited to questions on the interpretation of certain terms of Article 10 of Directive 2005/36. Two points merit emphasis.

25. First, it is undisputed before the German courts that Mr Angerer does not fulfil the requirements of an automatic recognition. He is not in possession of a diploma listed in Annex V, point 5.7, to Directive 2005/36, which means that he cannot, by virtue of the principle of automatic recognition, expect the Bavarian authorities to enrol him as an architect in Bavaria.[13] The Court is not, therefore, called upon to interpret provisions of the automatic system.[14]

26. Secondly, the German administrative courts of first and second instance have found that Mr Angerer fulfils the material requirements of the general system.[15] This finding does not appear to be questioned by the Bundesverwaltungsgericht, before which the appeal on a point of law (Revision) is brought. The Court is not, therefore, called upon to interpret the provisions relating to the material requirements of the general system. In particular, it is not for the Court, in the context of this preliminary reference, to determine whether Mr Angerer's qualification of 'planender Baumeister' under Austrian law and his professional experience are to be accepted by the German authorities under the conditions of Article 11 et seq. of Directive 2005/36 for the purposes of gaining access to the profession of architect in Germany.

27. All the Bundesverwaltungsgericht would like to know is whether Article 10 of Directive 2005/36 is to be interpreted in such a way as to preclude the national authorities from applying the general system to the case at issue.

11 — Following the political relaunch of the common/internal market in the mid-1980s, for areas not covered by this vertical approach a general and horizontal approach laying out general guidelines for recognition had been introduced. See Directives 89/48/EEC, 92/51/EEC and 1999/42/EC. The origin of these directives can be found in 'Completing the Internal Market', White Paper from the Commission to the European Council, COM(85) 310 final of 14 June 1985, at paragraph 93.

12 — See C. Barnard, *The substantive law of the EU. The four freedoms*, Oxford University Press, 4th ed., 2013, p. 320.

13 — According to the referring court, on 18 December 2012 – i.e. while proceedings before the referring court were already pending – Mr Angerer also graduated with the academic degree of Diplom-Ingenieur – civil engineering (structural engineering) (Fachhochschule (FH)) at the Hochschule für Technik, Wirtschaft und Kultur (HTWK) Leipzig (Leipzig University of Applied Sciences). The question whether the degree in civil engineering would allow Mr Angerer to benefit from an automatic qualification is not at issue in the present case. This was also confirmed by the parties during the hearing. In this connection, it should only be noted that this degree is not listed in Annex V, point 5.7, to Directive 2005/36. The question whether the profession of 'Bauingenieur' nevertheless falls within the automatic system (this seems to be the view taken by W. Kluth/ F. Rieger, 'Die neue EU-Berufsanerkennungsrichtlinie – Regelungsgehalt und Auswirkungen für Berufsangehörige und Berufsorganisationen', *Europäische Zeitschrift für Wirtschaftsrecht* 2005, pp. 486-492, in particular p. 488) is, therefore, not of relevance to the present case.

14 — Article 21 et seq. and Article 46 et seq. of Directive 2005/36.

15 — Article 11 et seq. of Directive 2005/36. In this respect, the Verwaltungsgerichtshof Bayern, upholding a judgment of the Verwaltungsgericht München, has already found that the conditions of Article 13(3), in combination with Article 11(c), of Directive 2005/36 are fulfilled: see judgment of 20.09.2011 – 22 B 10.2360, at point 33, available at: http://openjur.de/u/493661.html.

Question 1: Interpretation of the wording 'specific and exceptional reasons' in Article 10 of Directive 2005/36

28. The referring Court seeks an interpretation of the wording 'specific and exceptional reasons' of Article 10 of Directive 2005/36. It would like to know whether the cases listed in points (a) to (g) of this article are but an enumeration of 'specific and exceptional reasons' or whether that wording has an additional normative meaning. Put differently, it seeks guidance as to whether the national authorities can undertake an assessment of whether Mr Angerer's formal qualifications of 'planender Baumeister' and his professional experience can, under Article 11 et seq. of Directive 2005/36, lead to access to the profession of architect in Germany or whether, before assessing his formal qualifications, the national authorities must first examine whether there are 'specific and exceptional reasons' as to why Mr Angerer is not in possession of evidence of formal qualification as an architect in Austria.

Textual and systemic interpretation of Article 10 of Directive 2005/36

29. As we have already seen above, according to Article 10, the general system for the recognition of evidence of training applies to all professions which are not covered by Chapters II and III of Title III (Freedom of establishment) and in the following cases in which the applicant, *for specific and exceptional reasons*, does not satisfy the conditions laid down in those chapters. The 'following cases' are those listed in points (a) to (g).

30. The nature of these points varies. Thus, points (a) and (b) relate to professional experience or practice while points (c), (d), (e) and (f) deal with specific formal qualifications. Point (g) is completely different in nature: it deals with migrants who have qualifications issued in a third country.

31. Due to the position of the wording 'specific and exceptional reasons' right at the beginning of Article 10, i.e. before the list of points (a) to (g),[16] I would suggest that that wording should have the same meaning for each of the points (a) to (g) that follow. Otherwise, the legislature should have provided each of those points (a) to (g) with its own additional wording, adapted to the specific needs of each point.

32. This finding leads us to the question whether points (a) to (g) of Article 10 of Directive 2005/36 constitute by themselves the reasons why the general system is to apply or whether there must there be additional reasons.

33. Let us examine more closely the term 'reason'. The *Oxford Advanced Learner's Dictionary* gives the following definition of this term: 'a cause or an explanation for something that has happened or that somebody has done'.[17] The *Cambridge Advanced Learner's Dictionary* gives a comparable definition: 'the cause of an event or situation or something that provides an excuse or explanation'.[18] The key element in these definitions appears to me to be the element of explanation. A 'reason' inherently offers an explanation.

16 — Before the bracket, as one would say in the field of mathematics.

17 — Definition available at: http://www.oxfordlearnersdictionaries.com/definition/english/reason_1.

18 — Definition available at: http://dictionary.cambridge.org/dictionary/british/reason.

34. On a first reading of the terms of Article 10, one could be tempted to assume that the wording 'specific and exceptional reasons' require additional elements, such as an explanation as to why the conditions laid down in Chapters II and III are not fulfilled in the cases of Article 10(a) to (g). Indeed, on strict textual interpretation, the points (a) to (g) barely qualify as 'reasons'.[19] In the case of an architect under point (c), an explanation would be required as to why the person concerned holds evidence of formal qualification not listed in Annex V, point 5.7.[20]

35. The referring court leans towards such an interpretation. In its opinion, with respect to architects, two cumulative conditions have to be fulfilled: first, an applicant holds evidence of formal qualification not listed in Annex V, point 5.7, and secondly, this is due to 'specific and exceptional reasons'.

36. Nevertheless, I am not convinced of such a line of reasoning.

37. If we can assume that the terms 'specific and exceptional reasons' have the same meaning for points (a) to (g), we will quickly realise that it is barely possible to come up with a common definition. Let us take point (g), according to which the general system applies where the applicant who, for specific and exceptional reasons, does not satisfy the conditions laid down in Chapters II and III is a migrant who meets the requirements set out in Article 3(3) of the directive. This last provision states that evidence of formal qualifications issued by a third country are to be regarded as evidence of formal qualifications if the holder has three years' professional experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualifications in accordance with Article 2(2), certified by that Member State. Can it be expected that someone having obtained formal qualifications in a third country has to advance specific and exceptional reasons as to why these qualifications are obtained in such a third country? The answer is, of course, 'no'. What is 'specific and exceptional' here is the *fact* that the formal qualifications are obtained in a third country, not the *reason* why they are obtained there.

38. I find it very difficult to imagine that if the terms 'specific and exceptional reasons' have no additional meaning as regards point (g), they would have an additional meaning for the other points.[21]

39. In other words, even if I can understand that in the case of architects under point (c) it is theoretically possible to conceive of specific and exceptional reasons as to why the migrant holds a formal qualification not listed in Annex V, point 5.7, to Directive 2005/36,[22] I would still have reservations concerning the attribution of an additional meaning to the wording 'specific and exceptional reasons' for each and every one of the points (a) to (g).

19 — It should be noted that the other language versions of Article 10 use the same term, either in singular or plural form. By way of example, in plural form: 'aus … Gründen' (DE), 'põhjustel' (ET), 'dėl ... priežasčių' (LT), 'z przyczyn' (PL); in singular form: 'por una razón' (ES), 'pour un motif' (FR), 'per una ragione' (IT).

20 — For the present case, this would mean that Mr Angerer would have to explain why he is in possession of the qualification of 'planender Baumeister' under Austrian law. An ensuing question would then be whether 'specific and exceptional reasons' are to have an objective or a subjective meaning.

21 — It is for this reason that 'situations' or 'cases' would have been more appropriate terms than 'reasons'.

22 — One could, for instance think of objective reasons, such as the accidental non-inclusion by the EU legislature of a qualification in Annex V, point 5.7, or subjective reasons such as particular and exceptional family circumstances having enabled the applicant to only obtain a qualification not listed in the Annex, instead of one listed in the Annex.

Legislative history of Article 10 of Directive 2005/36

40. Looking at the legislative history of the directive, we can see that the initial Commission proposal [23] regarding Article 10 was short and to the point. It reads: 'This Chapter applies to all professions which are not covered by Chapters II and III of this Title *and to all cases in which the applicant does not satisfy the conditions laid down in those Chapters.*' [24] Ergo, the proposal anticipated that whenever the conditions of automatic recognition were not fulfilled, the general system still applied in principle.

41. The Parliament did not object to this wording and accordingly, at first reading, did not propose an amendment to Article 10. [25]

42. For the Council, however, the Commission proposal was too far-reaching. In its common position, it considered that this extension of the general system should apply only to professions not covered by Chapters II and III of Title III, as well as 'to the particular cases listed in *Article 10(a) to (g)* of the common position in which the applicant, while belonging to a profession covered by those Chapters, does not satisfy, for specific and exceptional reasons, the conditions laid down in those Chapters'. [26] The common position furthermore states that '[t]he cases listed cover situations currently covered by the Treaty as interpreted by the European Court of Justice and situations subject to specific solutions under existing directives'. [27]

43. The Commission in turn accepted this counter-proposal, stating that the common position clarified the Commission proposal with regard to the cases of subsidiary application of the general regime of recognition, listing the specific situations concerned which were currently governed either by ad hoc rules, provisions of the Treaty, or the general recognition. The Commission further stated that 'this clarification does not involve any substantive amendment'. [28]

44. I have my doubts as to the accuracy of this last statement, given that the effect of the common position of the Council is that the general system does not apply in all cases. Nevertheless, it appears clear to me that it was primarily the aim of the Community legislature to limit the particular cases to the exceptional cases of points (a) to (g), i.e. those already covered by the Treaty, as interpreted by the Court, and by existing directives. The idea was not to introduce additional criteria beyond points (a) to (g) for the application of the general system that would result from the wording 'specific and exceptional reasons'.

Article 10 of Directive 2005/36 read in the light of Article 49 TFEU

45. This interpretation of Article 10 of Directive 2005/36 is furthermore confirmed by interpretation in the light of Article 49 TFEU. [29]

23 — See Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications, COM(2002) 119 final, OJ 2002 C 181 E, p. 183, at p. 188.

24 — My emphasis.

25 — See European Parliament legislative resolution of 11 February 2004 on the proposal for a European Parliament and Council directive on the recognition of professional qualifications (COM(2002) 119 – C5-0113/2002 – 2002/0061(COD)), OJ 2004 C 97 E, p. 230.

26 — See Common Position (EC) No 10/2005 adopted by the Council on 21 December 2004 with a view to adopting Directive 2005/…/EC of the European Parliament and of the Council of … on the recognition of professional qualifications, OJ 2005 C 58 E, p. 1, at p. 122.

27 — Ibid, p. 123.

28 — See Communication of 6 January 2005 from the Commission to the European Parliament pursuant to the second subparagraph of Article 251(2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council on the recognition of professional qualifications, COM(2004) 853 final, p. 7.

29 — Article 49 TFEU constituting the *Grundnorm* of the right of establishment, in the accurate terminology of P.-C. Müller-Graff, in R. Streinz, *EUV/AEUV*, Beck, 2nd edition, Munich 2012, Artikel 49 AEUV, point 1.

46. In the judgment in *Commission* v *Spain*,[30] a case relating to pharmacists, the Court held that the right to recognition of diplomas is guaranteed as an expression of the fundamental right of freedom of establishment.[31] I see no reason why the same should not apply to architects. As a consequence Directive 2005/36 must be interpreted in light of the Treaty provision on freedom of establishment.

47. In this context, I would like to propose that the Court have recourse to the rationale of the judgment in *Dreessen*.[32]

48. This case concerned a Belgian national who had obtained a diploma in engineering in Germany, had worked as a salaried employee of various architects' firms in Liège (Belgium) and who sought admission to the register of the Architects' Association of the province of Liège so that he could practise as a self-employed architect. His application had been refused on the ground that his diploma did not correspond to one awarded under an architect department within the meaning of Directive 85/384 and therefore did not fall under the directive. The Court held that in such a situation the Treaty article on establishment applied. It held that it was not the purpose of the directives on recognition to make recognition of diplomas, certificates and other evidence of formal qualifications more difficult in situations falling outside their scope.[33] The national authorities, therefore, had to examine Mr Dreessen's application.

49. The Court's interpretation of Article 49 TFEU for situations falling outside the scope of the relevant directive applies, in my view, *a fortiori* to an interpretation of a provision within Directive 2005/36. What I retain from *Dreessen* for the present case is this: Article 10(c) of the directive must be interpreted in a manner which is in conformity with the Treaties, and in particular the right to establishment, which means that it should not preclude national authorities from processing an application and checking whether the material requirements of the general system of recognition are fulfilled in the case of an architect. Article 10(c) should not make such an assessment more difficult. This does not mean that the national authorities are required to recognise Mr Angerer's diploma, as this is not the question posed. It merely means that they should be in a position to be able to examine whether his qualifications and experience correspond to the requirements of Article 11 et seq. of Directive 2005/36.

Reply to question 1

50. In conclusion, I am of the opinion that the wording 'specific and exceptional reasons' in Article 10 of Directive 2005/36 merely serves as an introduction to points (a) to (g) of that article. It does not have a normative value going beyond the cases listed in points (a) to (g). I therefore propose that the reply to question 1 should be that the wording 'specific and exceptional reasons' in Article 10 of Directive 2005/36 only refers to points (a) to (g) of that article. An applicant is not required to demonstrate 'specific and exceptional reasons' beyond those referred to in Article 10(a) to (g).

Question 2: Interpretation of the term 'architects' in Article 10(c) of Directive 2005/36

51. By question 2 the referring court in essence seeks clarification on the meaning of the term 'architects' in Article 10(c) of Directive 2005/36. It would like to know whether the person concerned must have carried out creative, urban planning, economic and possibly historic building conservation activities and, more generally, about the criteria determining what an architect is.

30 — C-39/07, EU:C:2008:265.

31 — See judgment in *Commission* v *Spain* (EU:C:2008:265, paragraph 37).

32 — C-31/00, EU:C:2002:35.

33 — See judgment in *Dreessen* (EU:C:2002:35, paragraph 26).

52. In the opinion of the Registration Committee, the concept of architect implies that certain minimum requirements are fulfilled by a person aspiring to be recognised as an architect under the general system. As criteria, recourse may be had to the requirements of Article 46 of Directive 2005/36.

53. In my opinion, the term 'architects' in Article 10(c) only indicates the profession to which access is sought by the applicant. Directive 2005/36 does not provide for a legal definition of what an architect is – neither in the automatic system nor in the general one.

54. It is true that Article 46 – like Article 3 of Directive 85/384 [34] – of Directive 2005/36, entitled 'training of architects', lays down in detail what kind of knowledge, skills and competences have to be acquired in architecture studies qualifying for the automatic system. This does not mean, however, that the directive attempts to define what an architect is.

55. Indeed, with respect to Directive 85/384, the Court has held that Article 1(2) of that directive laying out its scope [35] did not purport to give a legal definition of activities in the field of architecture and that it was for the domestic law of the host Member State to define activities falling within the scope of that field. [36] These findings of the Court relate to what is now the automatic system. [37]

56. I take the view that if the directive does not even attempt to define what an architect is in the automatic system, it cannot, *a fortiori*, do so for the general one.

57. Moreover, I would propose that the Court should not read the requirements of Article 46(1) of Directive 2005/36 into the term 'architects' in Article 10(c) of Directive 2005/36. This would effectively amount to making the applicability of the general system conditional on the fulfilment of criteria pertaining to the automatic system. Concepts of the automatic system would be introduced to the general system through the back door. Ultimately, the general system would be undermined.

58. I would therefore be very cautious in giving a too restrictive interpretation to the term 'architects' under Article 10 of Directive 2005/36. Whether a person is admitted to practise as an architect under the general system is determined by the authorities of the Member State once they have applied the requirements of Article 11 et seq. and carried out their evaluation under these articles. If one were to read too many requirements into the term 'architects', there would be the risk that the assessment of the national authorities to be carried out would be somewhat forestalled.

59. The term 'architects' used in Article 10(c) of Directive 2005/36 does not imply that national authorities must look for additional criteria to be fulfilled by a person applying for recognition under the general system. At this juncture of the directive, Article 10(c) does not preclude national authorities from finding that a person concerned fulfils the criteria for recognition under the general system. I do not see any reason why they should be prevented from applying the general system of recognition.

34 — The wording of Article 46(1) of Directive 2005/36 is virtually identical to that of Article 3 of Directive 85/384.

35 — Article 1(2) of Directive 85/384 reads as follows: 'For the purposes of this Directive, activities in the field of architecture shall be those activities usually pursued under the professional title of architect.'

36 — See judgment in *Ordine degli Ingegneri di Verona e Provincia and Others* (C-111/12, EU:C:2013:100, paragraph 42). See also order in *Mosconi and Ordine degli Ingegneri di Verona e Provincia* (C-3/02, EU:C:2004:224, paragraph 45). In the same vein, Advocate General Léger in his Opinion in *Dreessen* (C-31/00, EU:C:2001:285, point 4) found the following: 'The purpose of the directive is not to bring about the harmonisation of national laws in the field of architecture. It does not define what an architect is. Nor does it lay down criteria for defining the profession.'

37 — Since Directive 85/384 only contained such an automatic system, as we have seen above.

60. The reply to question 2 should, therefore, be that the term 'architects' in Article 10(c) of Directive 2005/36 refers to the profession to which access is sought by an applicant. It must not be interpreted in such a way as to limit the scope of application of the system for the recognition of evidence of training under Title III, Chapter I, of Directive 2005/36.

Conclusion

61. In the light of all of the foregoing, I propose that the Court answer the questions referred by the Bundesverwaltungsgericht as follows:

(1) The wording 'specific and exceptional reasons' in Article 10 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications only refers to points (a) to (g) of that article. An applicant is not required to demonstrate 'specific and exceptional reasons' beyond those referred to in Article 10(a) to (g).

(2) The term 'architects' in Article 10(c) of Directive 2005/36 refers to the profession to which access is sought by an applicant. It must not be interpreted in such a way as to limit the scope of application of the system for the recognition of evidence of training under Title III, Chapter I, of Directive 2005/36.