

SUMMARY

ECJ 2 March 2023, case C-270/21 (A (Enseignant d'école maternelle)), Work and Residence Permit

A – v – Opetushallitus, Finnish case

Summary

A profession which has qualification requirements but leaves the assessment thereof to the discretion of the employer is no 'regulated profession' within the meaning of Directive 2005/36.

Questions

Must Article 3(1)(a) of Directive 2005/36 be interpreted as meaning that a profession in respect of which national legislation imposes qualification requirements for access to and pursuit of the profession, but leaves employers a discretion in assessing whether those requirements are met, must be regarded as a regulated profession within the meaning of that provision?

Must Article 3(3) of Directive 2005/36 be interpreted as meaning that that provision is applicable where the evidence of formal qualifications presented to the host Member State was obtained on the territory of another Member State at a time when that other Member State existed not as an independent State but as a Soviet Socialist Republic, and where that evidence of formal qualifications was regarded by that Member State as evidence of formal qualifications issued by that Member State after it had regained its independence?

Ruling

Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council of 7

September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, must be interpreted as meaning that a profession in respect of which national legislation imposes qualification requirements for access to and pursuit of the profession, but leaves employers a discretion in assessing whether those requirements are met, is not to be regarded as a 'regulated profession' within the meaning of that provision.

Article 3(3) of Directive 2005/36, as amended by Directive 2013/55, must be interpreted as meaning that that provision is not applicable where the evidence of formal qualifications presented to the host Member State was obtained on the territory of another Member State at a time when that other Member State existed not as an independent State but as a Soviet Socialist Republic, and where that evidence of formal qualifications was regarded by that Member State as evidence of formal qualifications issued by that Member State after it had regained its independence. Such evidence of formal qualifications must be regarded as having been obtained in a Member State and not in a third country.

Creator: European Court of Justice (ECJ)

Verdict at: 2023-03-02

Case number: C-270/21