

RECOGNITION OF QUALIFICATIONS: EU LAW

VERONIKA KUDROVÁ

Právnická fakulta, Masarykova univerzita

Abstract

The contribution is concerned with the professional recognition of qualifications in the EU Law topic. It describes its importance for the internal market – free movement of persons and free movement of services. It mentions the Old System of recognition of qualifications created mostly in the 70's and 80's and deals with the New system created by the Directive 2005/36/EC on the recognition of professional qualifications. The only profession which is not included into the New Directive is the advocate's profession – also briefly mentioned. The last part of the paper describes how the New Directive is (not) transposed into the Czech law.

Key words

European Law, Recognition of Qualifications, Directive on the Recognition of Professional Qualifications

Abstrakt

Příspěvek se zabývá institutem profesního uznávání kvalifikací v právu Evropské unie. Popisuje jeho význam pro vnitřní trh, a to konkrétně pro volný pohyb obyvatel a volný pohyb služeb. Zabývá se jak původním systémem uznávání kvalifikací, který byl vytvořen zejména 70. a 80. letech, tak i současným systémem zavedeným směrnicí 2005/36/ES o uznávání odborných kvalifikací. Jedinou profesí, která nebyla nově upravena touto směrnicí je profese advokáta – i o ní je zmínka. Poslední část příspěvku popisuje, jakým způsobem (ne)došlo k transpozici zmíněné směrnice do českého práva.

Klíčová slova

Evropské právo, uznávání kvalifikací, směrnice o odborném uznávání kvalifikací

Introduction: the topic

There are two distinguishable types of recognition of qualifications – the academic recognition and the professional recognition.

The academic recognition means recognition of diplomas, qualifications or study periods of any (domestic or foreign) educational institution by another one, either in order to entrance to an advanced study, or in order to reduce the study duties duplication. It's a very important instrument for a student's mobility.

The professional recognition concerns in the evaluation knowledge and competence of the certain person. They can be proved by a diploma confirming successful completion of the educational level, by a document proving exercise of the regulated profession de facto or somehow else (by the compensatory measures). The result of the process is a decision whether the person is capable to practise the profession or not.

Even if the European Union is concerning about the education (inside its competences' boundaries), it is not concerned about the academic recognition at all. The professional recognition, on the other hand, is in the scope of view of the European Union.

Professional recognition of qualifications within the EU

Even if the movement of economically active persons was very advisable, in the past there were a few obstructions in access to certain working activities to those who posses the relevant qualifications. In the beginning the European Community accepted several directives to facilitate the recognition of professional qualifications.¹ Unfortunately they did not provide any protection for the recently qualified professionals, because they had not been aimed at the recognition of diplomas. They were based on the professional experience, which was , obviously, missing to those.² So that it became necessary to adopt a special legislation on the recognition of qualifications.

The Old System

The old system of professional recognition of qualifications which was growing up in the 1970's, 1980's and 1990's, consisted of the general system of the recognition of qualifications and the sector system.

The sector system consisted of the several sectoral directives, which represented the specific regulation on certain professions:

¹ E.g. directive 77/92/EEC on insurance agents and brokers or directive 82/470 on transport and travel agencies.

² Apap. J. Freedom of Movement of Persons: A practitioner's handbook. Hague: Kluwer Law Publishing, 2002, p. 74.

Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services;

Council Directive 77/452/EEC concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, including measures to facilitate the effective exercise of this right of establishment and freedom to provide services;

Council Directive 78/686/EEC concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services;

Council Directive 78/1026/EEC 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services;

Council Directive 80/154/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in midwifery and including measures to facilitate the effective exercise of the right of establishment and freedom to provide services;

Council Directive 85/384/EEC 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;

Council Directive 85/433/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy;

Council Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications; and

Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

These directives had fix minimum standards for training criteria such as access, length and contents of training and states that any diploma conforming to the criteria listed in the directive must be automatically recognized anywhere in the Community. Consequently, those

successful in obtaining recognition are given the right to exercise that profession on the only condition that they will be registered by the competent authorities in the host state.³

All other professions, which were not covered by the sectoral directives, came under the directives of *the general system*:

Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration; Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC; and

Directive 1999/42/EC establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications.

The general system was being applied to professionals who have completed a minimum period of three years of post secondary education (the Directive 89/48/EEC) or a lower level of training, not at degree or necessarily diploma level.

The basic principle of the directives was the right of Member State authorities to refuse the right of entry and practice of a profession on the grounds that the holder does not acquire the appropriate national qualifications, but where qualifications were sufficient or different, a period of adaptation or a compensatory measure might be required.⁴

The new system

By the time, however, came up that the rules of such systems should be improved in the light of experience and the complicated system of several directives should be transferred in the single text. That happened in 2005 by the directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (thereinafter “the New Directive”). The only profession whose regulation have not been transformed into the new directive is a lawyer’s profession.

As mentioned, the old system of recognition of qualification including both the general system and the sector system has become complicated and unsatisfactory partially. Thus the New Directive on recognition of qualifications has been adopted. The mechanism of

³ Ibid, p. 78.

⁴ Tillotson, J., Foster, N. Text, Cases and Materials on European Union Law, 4th edition, Coogee: Cavendish Publishing, 2003, p. 332 – 333.

recognition established by the general system remains unchanged but in order to take into account all situations for which there is still no provision relating to the recognition of professional qualifications, the general system was extended to those cases which are not covered by a specific system, either where the profession is not covered by one of those systems or where, although the profession is covered by such a specific system, the applicant does not for some particular and exceptional reason meet the conditions to benefit from it.

It was also necessary to create the system of automatic recognition based on professional experience for industrial, commercial and craft activities if they have been pursued for a reasonable and sufficiently recent period of time in another Member State.

In order to facilitate the temporary and occasional providing services has been set up, that any service providers may provide services on a temporary and occasional basis in another Member State under their professional title without applying for recognition of their qualifications.

General system

The new directive shall be applied 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. The directive, however, is not applicable to citizens whose education is not recognized either in the domestic state⁵ or to professions which are not regulated in the domestic state.⁶

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 applied 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. Access to and pursuit of the profession, shall also be granted to applicants who have pursued the this profession on a full-time basis for two years during the previous ten years in another Member State which does not regulate that profession, providing

⁵ Judgement T-16/90 Anastasia Panagiopoulou vs. European Parliament.

⁶ Craig, P., De Búrca G. EU Law: Text, Cases and Materials, Fourth edition. Oxford: Oxford University Press, 2008, p. 840 – 841.

they possess one or more attestations of competence or documents providing evidence of formal qualifications.

With certain circumstances the host Member State is allowed to require the applicant to complete an adaptation period of up to three years or to take an aptitude test. Anyway it must offer the applicant the choice between an adaptation period and an aptitude test.

Sectoral provisions

Most of the sectoral directives mentioned above were transferred into the new directive. The only directives which were not transferred are the Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services⁷ and the Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.⁸

In the New Directive there are the minimum study requirements and the requested learning outcomes set up.

While the basic medical training for *doctor of medicine* shall comprise a total of at least six years of study or 5500 hours of theoretical and practical training provided by, or under the supervision of, a university, specialist medical training includes additional free to five years long theoretical and practical training at a university or medical teaching hospital or, where appropriate, a medical care establishment approved for that purpose by the competent authorities or bodies. The specific training in general medical practice shall be carried out on a full-time basis, under the supervision of the competent authorities or bodies. It shall be more practical than theoretical.

The training of *nurses responsible for general care* shall comprise at least three years of study or 4600 hours of theoretical and clinical training, the duration of the theoretical training representing at least one-third and the duration of the clinical training at least one half of the minimum duration of the training.

Basic *dental training* shall comprise a total of at least five years of full-time theoretical and practical study, comprising at least the programme described in the Directive.

The training of *veterinary surgeons* shall comprise a total of at least five years of full-time theoretical and practical study at a university or at a higher institute providing training

⁷ The directive requests that practising lawyers from Member States must be accepted on the basis that the training of lawyers in the domestic state is as strict as in the host state.

⁸ According the directive any lawyer shall be entitled to practise on a permanent basis, in any other Member State under his domestic state professional title, as an independent or salaried lawyer.

recognised as being of an equivalent level, or under the supervision of a university, covering at least the study programme referred to in the Directive as well.

The training of *midwives* shall comprise a total of at least specific full-time training as a midwife comprising at least three years of theoretical and practical study or specific full-time training as a midwife of 18 months' duration (if the midwife is already qualified as a nurse responsible for general care), comprising at least the study programme described in the Directive.

Evidence of formal qualifications as a *pharmacist* shall attest to training of at least five years' duration, including at least four years of full-time theoretical and practical training at a university or at a higher institute of a level recognised as equivalent, or under the supervision of a university and six-month traineeship in a pharmacy which is opened to the public or in a hospital, under the supervision of that hospital's pharmaceutical department. That training cycle shall include at least the programme described in the Directive.

The last profession regulated by the sectoral provisions is the profession of *architect*. Training as an architect shall comprise a total of at least four years of full-time study or six years of study, at least three years of which on a full-time basis, at a university or comparable teaching institution. The training must lead to successful completion of a university-level examination.

The Transposition into the Czech Law

The Old System's directives were transposed into the Czech Law by the Act 18/2004 on the Recognition of Professional Qualifications (in force since 1.5.2004 – the accession of the Czech Republic to the EU). Unfortunately, as far as the New Directive is concerned,⁹ the Czech Republic has not been able to fulfil its duties and transpose the New Directive into the Czech Law yet. So it is late with all the consequences which it entails.

The most actual progress: by today's date¹⁰ the novel of the Act on the Recognition of Professional Qualifications is in the last phase stadium of the legislature process – it is waiting for the president's signature.

Conclusion

⁹ The Member States should bring into force the laws, regulations and administrative provisions necessary to comply with it by 20 October 2007 at the latest.

¹⁰ 5/11/2008.

The mechanism of recognition of qualifications established by directives 89/48/EEC and 92/51/EEC has remained unchanged; it just tries to become a better system. The most of the sectoral directives were combined in a single text and the general system set up by the New Directive should subsidiarily cover also the professions regulated by the special provisions, if the applicants do not fulfil all the conditions to have their qualifications recognized by the sectoral provisions.

There have been no judgements on the New Directive until now, nevertheless the judgements passed on the Old System are still applicable.

Literature

[1] Mentioned directives

[2] Apap, J. *Freedom of Movement of Persons: A practitioner's handbook*. Hague: Kluwer Law Publishing, 2002.

[3] Craig, P., De Búrca G. *EU Law: Text, Cases and Materials*, Fourth edition. Oxford: Oxford University Press, 2008.

[4] Tillotson, J., Foster, N. *Text, Cases and Materials on European Union Law*, 4th edition, Coogee: Cavendish Publishing, 2003.

Contact – e-mail:

veronika.kudrova@law.muni.cz