

# 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

1. 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?
2. 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

1. 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.

2. 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.

# ECJ 2 March 2023, joined cases C-410/21 and C-661/21 (DRV Intertrans), Social Insurance

FU, DRV Intertrans BV, PN, Verbraeken J. En Zonen BV, in criminal proceedings, Belgian case

## Summary

A1-certificates are binding even if they are suspended, but the court of the 'host' Member State may still set them aside if (i) the issuing institution does not cooperate with the procedure of dialogue and reconciliation, and (ii) the right to a fair trial is still guaranteed. The fact that a company holds a Community licence for road transport does not constitute irrefutable evidence in determining which Member States' social security legislation applies.

## Questions

1. Must, first, whether Article 5 of Regulation No 987/2009 must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State ceases to bind the institutions and courts of the Member State in which the work is carried out where, following a request for review and withdrawal sent by the competent institution of that latter Member State to the issuing institution, that institution has declared that it has suspended the binding effects of that certificate until such time as it decides definitively on that request. If that first question is answered in the negative, the referring