COURT OF APPEAL

JUDGES

THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE GIANNINO CARUANA DEMAJO
THE HON. MR JUSTICE ANTHONY ELLUL

Sitting of Tuesday, 12th May 2025

Number: 2

Application Number: 364/2021/1TA

Dr Isabel Cristina Yepes Chavarriaga

v

Il-Kunsill Mediku

1. This judgement concerns the appeal filed by the plaintiff from the judgement delivered by the Civil Court, First Hall on the 16th May, 2024. The case concerns a request for judicial review of a decision of the Medical Council regarding plaintiff's application to be registered in the Medical Register, and two decisions of the Health Appeals Committee.

2. The main facts are the following:

i. The plaintiff is a Colombian citizen.

ii. During the year 2008 she graduated as a *"General Medical Doctor"* from San Martin University, Medellin, Colombia. She is licensed to practise as a physician in Colombia.

iii. On the 3rd February 2010 her qualifications were recognised by the Ministry of Education in Spain. A certificate was issued confirming that her certificate as a *"General Practitioner, Doctor of Medicine"* obtained from the University of San Martin, Bogota, Colombia, *"is equivalent to the Spanish official university Degree in Medicine with the same effects in all the national territory"*.

iv. She practised the profession in Colombia during the period 2008 to 2013. However, she did not practice in Spain.

v. In 2019 plaintiff settled in Malta and she applied for registration in the Medical Register.

vi. By letter dated 10th July 2019 the Medical Council informed the plaintiff that she has to sit and pass the Medical Council Malta Statutory Examination (MCMSE) for Medical Practitioners in order to be granted full registration in Malta as a doctor. The exam consists of an interview on different medical subjects. She was also informed that she has a right to appeal the decision.

vii. Subsequently, plaintiff filed an appeal to the Health Care Professions Appeals Committee.

viii. On the 22nd July 2019 the Malta Qualification Recognition Information Centre recognized the qualification of general medicine which plaintiff achieved from the Fundación Universitaria San Martin in Colombia and declared that it is comparable to MQF Level 6, that is a bachelor's degree.

ix. On the 23rd July 2019 the Malta Qualification Recognition Information Centre recognized the qualification of Titulo de Especialista en Salud Occupational which plaintiff achieved in 2013 from Universidad CES. According to the certificate the qualification is comparable to MQF Level 7, i.e. a Master's Degree.

x. By email dated 20th February 2020, the Registrar of the Medical Council asked the Spanish counterpart whether plaintiff was licenced to practise in Spain. In an email dated 9th March 2020, they replied that the plaintiff *"is not and has not been registered with us"*.

xi. By decision delivered on the 19th November 2020 her appeal was rejected. The plaintiff as a third country migrant whose qualification has been recognised by the competent authority of a Member State, also requires three years work experience in that Member State to be eligible for automatic

recognition by the competent authority of another Member State. The Appeals Committee declared that plaintiff confirmed that she does not have such professional experience in Spain. Therefore, her argument that she qualifies for automatic recognition is incorrect.

xii. On the 22nd April 2021 the plaintiff filed the lawsuit wherein she is contesting the decisions of the Medical Council and the Health Care Professions Appeals Committee. She claims that the decisions are based on a wrong interpretation of the law, unjust, illegal, *ultra vires*, and in breach of European law and the principles of natural justice. In her application plaintiff complained that article 11 of the Health Professions Act (Chapter 464) applies as she is established in Malta, and therefore she has a right to have her name registered in the Medical Register irrespective of whether her qualifications were recognized in a Member State or in third country.

xiii. On the 11th October 2021, the Colegio Official de Medicos de Madrid informed the plaintiff in writing that on the 7th October 2021 she was registered as a member and she has the right to exercise the medical profession in the national territory (fol. 451).

3. In the lawsuit the plaintiff requested the Court to:

i. Declare that the decision of the Medical Council of the 10th July 2019 and the two decisions of the Committee of Appeals delivered on the 20th December 2019 and 19th November 2020 are wrong, unjust, ultra vires, illegal, in breach of European law and contrary to the principles of natural justice and also because of a wrong interpretation of the law.

ii. Declare null the said decisions and revoke the same.

iii. Order defendant to register plaintiff's name in the Medical Register.

iv. Declare that defendant is responsible for damages suffered by the plaintiff and which are still being incurred.

4. The plaintiff *inter alia* declared that in Colombia she practised as a physician, initially as a general practitioner and later in Occupational Health and Safety. She emigrated to Malta and lives with her partner and the Malta Qualifications Recognition Information Centre confirmed that her qualifications are recognized in Malta in the same level for a physician. She claims that her request for registration in the Medical Register should have been upheld by application of art. 11 of Chapter 464 of the Laws of Malta.

5. On the 8th June 2021 the defendant replied and contested all plaintiff's requests. The Council claims that:

i. "The Medical Council acted in a regular manner and the plaintiff was granted an opportunity to present her case. She fully participated in proceedings until a final decision was delivered.
ii. The recognition by the Malta Qualification Information Centre does not impose an obligation on the defendant to register her name in the Medical Register.
iii. The plaintiff is in actual fact asking to be automatically recognized, and this contrary to article 42A of chapter 464.
iv. The Council cannot be held responsible as regards to the alleged damages that plaintiff claims that she suffered. In the performance of his duties, the Council always respected and honoured the principles of natural justice."

6. By judgement delivered on the 16th May 2024 the First Court rejected all plaintiff's requests with judicial costs at her charge.

7. The First Court's reasoning was the following:

"Considerations

10. *At first glance, reasonabilness dictates that the claims of the plaintiff are founded on the principles of justice. She has obtained a medical decree in a non EU Country (Columbia), extensively practised the profession for a number of years in Columbia, had its degree recognised in a EU Country (Spain), and has also been recognised by the Maltese Centre of Recognition of Qualifications (MQRIC). Even the decisions of the European Court of Justice (ECJ) seem at first sight to give comfort to the plaintiffs claim in the present case.*

11. *Alas, notwithstanding all these positive factors, the Plaintiff's request, as already explained above, was damningly rejected by the appropriate adjudicatory bodies. This Court has to discover not whether justice was done and served but whether the conclusions reached by the relevant adjudicatory bodies are correct at law.*

12. *In this regard, keeping in mind that the law and justice do not always coincide and that behind this lack of coincidence there must be a clear logical objective to be achieved and that this must pass the test of reasonableness. In other words, the decisions reached should be in accordance with sound thinking and within the bounds of common sense.*

13. *In her submissions to the Medical Council, the plaintiff made frequent reference to the case of the ECJ of the* ***7th May 1991 in the***

names of Irène Vlassopoulou -vs- Ministerium für Justiz, Bund. *In this particular case it was observed that "If completion of a period of preparation or training for entry into the profession is required by the rules applying in the host Member State, those national authorities must determine whether professional experience acquired in the Member State of origin or in the host Member State may be regarded as satisfying that requirement in full or in part". (Emphasis of the Court).*

14. *It seems to this court, that according to this judgment, the key factor involved in evaluating entitlement to registration mainly consists in the experience acquired by way of practice in the Member State of origin or the host Country member State.*

15. *No matter how much the plaintiff finds it unpalatable, article 2 of Chapter 464 does state that "'evidence of formal qualifications' means diplomas, certificates and other evidence issued by the competent 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. Evidence of formal qualifications issued by a third country shall be regarded as evidence of formal qualifications if the holder has three years formal experience in the profession concerned on the territory of the Member State which recognised that evidence of formal qualification, certified by that Member State".*

16. *There is no doubt that the member State in question is Spain and not Columbia. The plaintiff herself agrees that she did not work in Spain and was not registered in another member State (a' fol 67). It is also undoubted, that the qualifications she holds do make her eligible to be registered and licensed in Spain. However, she did never register with the relevant Spanish authorities let alone practiced the profession in that State.*

17. *Furthermore The General System Directive 89/48/EEC lays down as follows in article 1:*

"For the purposes of this Directive the following definitions shall apply:

(a) diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence: which shows that the holder has the professional qualifications required for the taking up or pursuit of a regulated profession in that Member State". (Emphasis of the Court).

18. *Now, under Maltese law a three year period of practice whether in the member State of origin or the hosting member State is one of the qualifications required to taking up or persuing a medical profession. Indeed Arthur Camilleri, secretary to the Council, in examination keeps insisting, that one of the sine qua non requirements is that the applicant must have undergone three year experience practising (a' fol 77 to 79).*

19. *This is also consonant with article 1(e) of article 42A of Chapter 464 of the Laws of Malta wherein it is stated that holders of qualifications issued by a third Country not being a member State must have three years experience in the profession concerned on the territory of a member State. According to this provision, if the holder is a migrant, notwithstanding the period of experience this does not entitle the holder automatic recognition by the host State. (Emphasis by the Court)*

20. *The plaintiff is a migrant seeking to practice her medical profession in Malta. However article 42A (1)(e) explicitly lays down that migrants must have "in possession of evidence of formal qualifications issued by a third country and having three years professional experience in the profession concerned on the territory of that Member State which has recognised that evidence of formal qualification and certified by that member State" (Emphasis of this Court).*

21. *The Court does not consider these provisions and requirements as running against the principle established in the ruling of* ***Irène Vlassopoulou*** *nor the relevant regulation of the EU. The EU leaves it to the member State to regulate matters as regards the qualifications required to establish elegibilty for registration. What the EU prohibits is the unreasonable refusal of registration once all the qualifications of the member state have been satisfied by the applicant.*

22. *However, the plaintiff also complains that the Council failed to provide information regarding "the knowledge, skills and competencies acquired by the appellant in the course of her professional experience or through lifelong learning" as required by the Health Appeals Committee were nor carried out. This may be true, but it has little or no relevance to the matter in question. For the matter is determined by the criterion of three year experience in a member State, being that original or hosting.*

23. *There is no doubt that the Plaintiff did have this experience in Columbia. However, the regulation, the ECJ decision and local law all request that such experience refers to that happening on the territory of the Member State of Origin or in the host country member State. Columbia is not a member State nor a host country member state.*

24. *If this Court were to accept plaintiff's demand as to the nature of experience required under the law, it will not only be opening a flood gate to the prejudice to the local health care but would also be possibly discriminating against those that may have before been refused registration for the same reasons.*

25. *After having studied the detailed decision of the Health Care Professions Appeals Committee of the 19th November 2020, and in view of the above considerations, this Court will be rejecting the demands of the plaintiff*."

8. On the 14th June 2024 the plaintiff filed an appeal. Her appeal application is basically a repetition of he note of submissions she filed on the 16th October, 2023. Defendant replied on the 22nd July 2024. On the 15th July 2024 plaintiff gave a guarantee for judicial costs as requested by the Registrar.

9. Plaintiff's first complaint is that the first court based the judgement on a Directive of the European Union which does not apply to the case under review.

10. In paragraph 17 of the judgement, the first court referred to the General System Directive 89/48/EEC. A directive repealed and replaced by Directive 2005/36/EC which came into effect on the 20th October, 2007. Subsequently, directive 2013/55 amended Directive 2005/36 to further improve mobility for professionals. This brought about the enactment of the Various Laws (Transposition of Directive 2013/55/EU) Amendment Act, that is Act XXXIV of 2016 which *inter alia* included amendments to the provisions in the Health Care Profession Act (Chapter 464) and the Mutual Recognition of Qualifications Act (Chapter 451).

11. This notwithstanding, it is incorrect to claim that the appealed judgement is based on Directive 89/48. The judgement is based on an application and interpretation of Maltese law.

12. Plaintiff referred to article 3(3) of Directive 2005/36/EC and argued that once her Colombian degree was recognized in Spain, she was no longer considered to be a migrant. However, Art. 3(3) of that directive provides:

> *"Evidence of formal qualifications issued by a third country shall 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"*.

13. Plaintiff has no professional experience in Spain as a physician, and therefore she does not meet the requirements for EU recognition under this Directive. Therefore, although Spain recognized plaintiff's medical degree, this did not grant her the same rights as an EU qualified physician under the directive. According to art. 2 of Chapter 464, *"evidence of formal qualifications issued by a third country"* will be regarded as evidence of formal qualifications if the holder has three years formal experience in the profession concerned on the territory of the Member State which had recognised that evidence of formal qualification. Without this three year experience, which had to be certified by the Spanish authorities, the Medical Council had the right to assess her qualifications independently and impose additional requirements.

14. Secondly the plaintiff complains that the decision delivered on the 19th November 2020 by the Health Care Professions Appeals Committee is *ultra vires*. She claims that according to article 11 of the Health Care Professions Act (Chapter 464) she has the necessary requirements to be registered in the medical register and practice as a physician in Malta, because *"she had a qualification which had been recognised by a Member State"*. She contends that once she satisfied the requirement as per article 11(1)(c) of Chapter 464, the Medical Council should have registered her name in the Medical Register. Therefore, she claims that the defendant acted abusively because it requested the plaintiff to sit for an exam as a condition for registration (vide email dated 10th July 2019). She also claims that in the preliminary decision of the Appeals Committee (20th December 2019), Legal Notice 270 of 2016 was referred to. Subsidiary legislation made by the power granted to the Minister responsible for education according to the Mutual Recognition of Qualifications (Chapter 451). A law which according to plaintiff is not applicable to the case under review.

15. According to article 11(1)(c) of Chapter 464 the Medical Council keeps the register referred to as 'the Medical Register' in which *inter alia* the name of *"..... a person who has been established in a Member State, who holds* –

.....

> *(c) a qualification recognised for the purpose by a Member State, obtained from a University College, or Medical School…….*
>
> *Provided that in respect of applicants coming from third countries, whose qualifications have not been recognised in a Member State, the Medical Council may, in respect of such qualifications, require the applicant to sit for and pass a professional and linguistic proficiency test, and may also require that he serves as house physician and, or surgeon in a hospital recognized for the purpose by the Medical Council, for such period, being not longer than two years, as the Minister may prescribe, and the provisions of article 7(3) and (4) shall apply to a person required in virtue of this proviso to serve as a house physician or surgeon as if such person were the person referred to in those sub-articles".*

16. The court notes that during the relevant period for the purposes of this case, the plaintiff was not licensed to practice medicine in Spain. There is also no proof that she was *"established"* in Spain, that is having a professional base in Spain. A mere recognition of qualifications by the Spanish Ministry of Education is not in itself sufficient proof that plaintiff was established in Spain.

17. That the recognition of the qualification in Spain is on its own not sufficient, is also confirmed by article 42A(1) introduced by Legal Notice 27 of 2008 whose purpose was to transpose the provisions of Directive 2005/36 on the automatic recognition of professional qualifications, as amended by Council Directive 2006/100/EC of 20th November 2006. Paragraph (e) refers to *"migrants in possession of evidence of formal qualifications issued by a third country and having three years professional experience in the profession concerned on the territory of that Member State which has recognised that evidence of formal*

qualification and certified by that member State". Maltese law provides that the provisions of automatic recognition of formal qualifications and acquired rights do not apply in the circumstances mentioned in article 42A(1) of chapter 464. The court refers to article 21 of Directive 2005/36, where the principle of automatic recognition is regulated with regards to health professionals. Plaintiff's qualifications are not from an EU Member State, and therefore third country qualifications fall outside the scope of automatic recognition found in the Directive. This apart from the fact that plaintiff has not acquired any experience in Spain.

18. With regards to legal notice 270 of 2016, the subsidiary legislation simply amended subsidiary legislation 451.03 (*Recognition of Professional Qualifications Regulations*). The latter implemented the provisions of Commission Directive 2005/36/EC, whereas Legal Notice 270 of 2016 introduced changes after the enactment of *the Various Laws (Transposition of Directive 2013/55/EU) (Amendment) Act*.

19. Furthermore, the first court did not base its reasoning on subsidiary legislation 451.03 but on the provisions of Chapter 464 of the Laws of Malta. This apart from the fact that the Appeals Committee:

i. "While referring to S.L. 451.03 as amended by L.N. 270 of 2016, noted that although there is no proof that plaintiff is legally entitled or authorized to seek access to work in Malta, *"for the purposes of this preliminary decision only it is being presumed that appellant qualified as such"*.

ii. Referred to article 3 of Chapter 451 which provides that the Act shall apply to those professions listed in the schedule, and that a professional has to fulfil the conditions of that law or any enactment listed in the Schedule. The Health Care Professions Act (Chapter 464) is one of the laws mentioned in the Schedule. The Appeals Committee then referred to article 42A(a) and (b) of Chapter 464."

20. The reference to S.L. 451.03 had no negative effect on the outcome of the final decision delivered by the Appeals Committee on the 19th November 2020. The outcome of that preliminary decision was merely an order to the Medical Council to make an inquiry with the Spanish competent authority with regards to the *"... knowledge, skills and competencies acquired by appellant in the course of her professional experience or through lifelong learning ....."*. An order which was certainly not *ultra vires* in considering the appeal filed by the plaintiff from the decision of the Medical Council (Art. 11(4) of Chapter 464).

21. One could possibly argue that Malta, a Member State of the EU, recognised the qualifications of the plaintiff when on the 22nd July 2019 the Malta Qualification Recognition Information Centre issued an evaluation of qualification as regards to plaintiff's qualification from the Fundación Universitaris San Martin. According to the certificate the qualification was recognised as *"Comparable to MQF Level 6"* which is a bachelor's degree. However that certification does not confirm that the qualification is equivalent to a Doctor of Medicine and Surgery offered at

the University of Malta. This is very different from the certificate issued by the Spanish authorities dated 3rd February 2010 which confirms:

> *"That the certificate of General Practitioner, Doctor of Medicine, obtained from the 'Fundación Universitaria San Martin', Bogota (Colombia) by Ms Isabel Cristina Yepes Chavarriaga, born on 18 November 1981, of Colombian citizenship, is equivalent to the Spanish official university Degree in Medicine, with the same effects in all the national territory"* (fol. 46).

22. With regards to the qualification from the Universidad CES in Colombia as a Especialista en Salud Ocupacional, the local authority declare that this was comparable to MQF Level 7, which is a Master's Degree level. However, that certification has the same lacuna as the first one as it does not certify that it is equivalent to the local Doctor of Medicine and Surgery.

23. Therefore, since there is no proof that the qualifications plaintiff has from Colombia are equivalent to the Maltese degree of Doctor of Medicine and Surgery, her complaint cannot be upheld.

24. Plaintiff also referred to the judgement delivered on the 2nd March 2018 by this court in the case **Isabella Zananian Desira vs Kunsill Mediku**. However, the circumstances of that case were different.

25. Plaintiff's third complaint is that she is not a migrant. She contends that once her qualifications were recognised in Spain, she was no longer

considered a migrant in terms of Directive 2005/36. She claims that she is being treated as though her qualifications were not at all recognised in Spain but had come straight from Colombia, and tried to register in Malta from the very first time. She also refers to article 10(g) of the Directive 2005/36/EC and that the freedom of establishment *"6.5.6.... applies to migrants meeting the requirements out in Article 3(3) such as Appellant herself. In other words, once Appellant's qualifications were recognised in Spain, Directive 2005/36 did not consider Appellant to be a migrant any longer"*.

26. The court reiterates that while plaintiff's degree from Colombia was recognised in Spain, there is no proof that she ever practised medicine in Spain. The recognition of her qualification in Spain by the Ministry of Education is not enough for the purposes of Directive 2005/36 as transposed into Maltese law. Plaintiff referred to Article 10(g) of the Directive which provides:

> *"This Chapter applies to all professions which are not covered by Chapters II and III of this Title and in the following cases which the applicant, for specific and exceptional reasons, does not satisfy the conditions laid down in those Chapters:*
>
> *(g) for migrants meeting the requirements set out in Article 3(3)"*.
>
> This provision referred to by plaintiff herself refers to and applies to migrants."

27. The court has already explained and concluded that the recognition of plaintiff's qualification in Spain is not enough. Although the evidence

also shows that during the year 2021 plaintiff was registered to practise medicine in Spain, that is still not sufficient. The three year practise in Spain is an essential requisite, and has not been proved.

28. The fourth complaint concerns the reasoning of the first court that:

> *"24. If this court were to accept plaintiff's demand as to the nature of experience required under law, it will not only be opening a flood gate to the prejudice of the local health care but would also be possibly discriminating against those that may have before been refused registration for the same reasons"*.

29. However, in the preceding paragraphs, the first court made it abundantly clear that the plaintiff did not meet the requirement of three years experience in a Member State. Therefore, the first court applied the law. Regardless of the plaintiff's knowledge and skills acquired through her practice in Colombia, her claim is based on the fact that her qualification from a Colombian University was recognised in Spain. However, as established, such a recognition is insufficient where the qualification is from a non-EU Member State.

30. Her final complaint concerns plaintiff's claim for damages. This is obviously unfounded as the previous complaints have all been rejected.

Decision.

For these reasons the Court rejects plaintiff's appeal with judicial costs at her charge.

Mark Chetcuti Chief Justice	Giannino Caruana Demajo Judge	Anthony Ellul Judge

Deputy Registrar
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