



ROYAL NORWEGIAN MINISTRY
OF HEALTH AND CARE SERVICES

EFTA Surveillance Authority
Rue Belliard 35
B-1040 Brussel
BELGIUM

Your ref

Our ref

Date

18/2955-

26 September 2018

Dear Sir/Madam,

Letter of formal notice to Norway concerning the recognition procedure for Hungarian qualifications

1 Introduction

Reference is made to the EFTA Surveillance Authority's (the Authority) letter of formal notice of June 12, 2018, and letter of September 6, 2018, whereby Norway was granted until September 26, 2018 to submit its observations on the recognition procedure for Hungarian qualifications. The Norwegian Ministry of Health and Care Services ("the Ministry"), acting on behalf of the Government of Norway, hereby submits its observations.

The Ministry respectfully disagrees with the Authority's preliminary conclusions. The Ministry maintains that its handling of the applications for recognition of the Hungarian qualification "Master in Psychology" with a specialisation in "Clinical and Health Psychology" complies with Directive 2005/36 on the recognition of professional qualifications ("the Directive"). The Ministry asserts that Directive 2006/123 on services in the internal market ("Directive 2006/123") does not apply to the regulated profession "psykolog" at issue. The Ministry asserts that the handling of applications for recognition complies with the rights to free movement of workers and freedom of establishment of the EEA-Agreement (Articles 28 and 31 EEA).

This letter details the grounds for Norway's position, and presents further documentary evidence of relevance. The Ministry has procured English translations of relevant Hungarian legislation and regulations, which will be submitted to the Authority.¹ Unless otherwise indicated, the Ministry will refer to Norwegian sources in Norwegian.

¹ Due to technical issues, the Ministry has been unable to procure a correctly formatted version of Attachment 16 which contains excerpt of relevant laws translated to English. This will be forwarded as soon as possible.

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This letter is structured as follows: Section 2 provides an executive summary. Section 3 describes the factual background of the case. Section 4 explains the education and system for psychologists and clinical psychologists in Norway. Section 5 explains the education and system for psychologists and clinical psychologists in Hungary. Section 6 gives an overview of applicable Norwegian law. Section 7 presents Norway's assessment with regard to Article 13 and 14 of the Directive. Section 8 presents Norway's assessment with regard to Directive 2006/123 and Articles 28 and 31 EEA. Section 9 presents Norway's assessment with regard to case processing times. Section 10 concludes.

2 Executive summary

The Authority has concluded, "as its information presently stands",² that Norway's handling of applications for recognition of the Hungarian qualification of Master in Psychology with a specialisation in "Clinical and Health Psychology" does not comply with the Directive, Directive 2006/123, and Articles 28 and 31 EEA. These conclusions, however, are based on information which in part is incorrect and insufficient. This reply will seek to clarify these misconceptions.

To summarise, the misconceptions relate, in particular, to:

- (i) the understanding of the regulated profession "psykolog" in Norway. Norwegian legislation uses the term "psykolog" (psychologist) in a narrow sense, only for clinical psychologists, and precludes the use of the term "psykolog" for persons having psychology degrees in arts and humanities. Hungarian legislation refers to psychology and psychologists ("okleveles pszichológus") in a wider sense, and to clinical psychology as "specialised clinical psychology". To avoid confusion, this letter will specify "clinical psychologist" in brackets whenever using the Norwegian term "psykolog";
- (ii) the assumption that "[u]nlike in Norway, the profession of psychologist ("okleveles pszichológus") in Hungary is not a regulated profession." Rather, psychology in a wider sense is unregulated in both Norway and Hungary, while the profession of clinical psychology is regulated in both countries, cf. the Norwegian Health Personnel Act Section 48(1)t and the Hungarian Health Act of 1997 Section 103;
- (iii) the assumption that "okleves pszichológus" can be registered in the Hungarian health registry, when, in fact, they cannot be registered in the required operational registry for providing healthcare services in Hungary nor the basic registry for healthcare qualifications, cf. Sections 111 and 112 of the Hungarian Health Act of 1997;
- (iv) the assumption that supervision of Hungarian candidates in basic clinical psychology education originates in employment regulations without regard for patient safety, when, in fact, the requirement of supervision originates in the

² The Authority's letter paragraph 217

Health Act of 1997, Section 110, which aims to safeguard patient safety, cf. Section 1 and its preamble;

- (v) the assumption that the Hungarian two-years MA in Psychology compares to the Norwegian six-years of professional study programs in psychology. The Hungarian MA is a theoretical degree in arts and humanities, with little clinical practice, whereas the Norwegian professional study programs are healthcare degrees in clinical psychology, with substantial and integrated clinical practice;
- (vi) the alleged comparability of the Norwegian and Hungarian education systems. The Authority's recount seems to miss that there are Norwegian BA and MA in Psychology, degrees in arts and humanities, which do not lead to authorisation as "psykolog" (clinical psychologist). Moreover, the recount seems to miss the distinction in Hungary between the BA and MA in Psychology, which are theoretically oriented degrees in arts and humanities, and the basic and higher post-graduate specialisation in clinical psychology (in total six years), which are clinically oriented healthcare degrees.

The Ministry's assessments can be summarised as follows:

First, the Ministry refutes that the complainants are entitled to recognition as "psykolog" (clinical psychologist) in Norway. The Ministry submits that the applicants are not entitled to recognition pursuant to the Directive Article 13(2) second paragraph because their education is not "regulated education and training" within the meaning of Article 3(1)e. More specifically, their education as "okleves pszichológus" has not qualified them to pursue the same profession in Hungary as a "psykolog" in Norway. Furthermore, the Ministry submits that Directive 2006/123 does not apply to the recognition of authorised clinical psychologists ("psykolog") in Norway, because clinical psychology constitutes "healthcare services" which is exempted from the said Directive further to Article 2 No. 2 f. Finally, the Ministry refutes that Articles 28 and 31 EEA are infringed. The applicants are not precluded from pursuing the same profession as "okleves pszichológus" in Norway which they are qualified for in Hungary. The refusal merely denies them the right to use the title "psykolog", which they are not qualified for or entitled to work as under Hungarian Health legislation. In any event, the refusal is grounded in compelling public interests with regard to quality and patient security in the health service, and is proportional and necessary.

Second, while the Ministry acknowledges that the deadlines stipulated in Article 51 (2) of the Directive for first-time consideration of applications have been exceeded in several cases, it does not consider that the case processing of appeals have been unduly delayed. The wording of Article 51 (2) does not regulate deadlines for appeals. Moreover, the long case processing time for the appeals in this case was justified by the need for, and difficulties in obtaining, sufficient and correct factual information from Hungary in order to make correct decisions on appeal. With respect to the Authority's submissions under Article 13 of Directive 2006/123, the Ministry recalls that this Directive does not apply to "healthcare services" at issue here.

Third, with respect to the Authority's claim that Norway does not have in place a system for appealing failures to reach timely decisions, cf. Article 51(3) of the Directive, the Ministry

informs the Authority that it has adopted regulations to this effect, cf. Regulations of 19 December 2016 No 1874 and Amendment Regulations of 15 August 2018 No 1261.

3 Factual background

3.1 Norway's change of practice

Before the change of practice in 2016, the Norwegian Directorate of Health mistakenly assumed that the master's degree in psychology with specialisation in Clinical and Health Psychology from ELTE qualified graduates to take up a regulated profession in clinical psychology in Hungary.

Statistics from 2005 to the change of practice in 2016 show that a total of 19 applicants were, incorrectly, deemed to be entitled to authorisation as the Norwegian "psykolog" (clinical psychologist) pursuant to the Directive Art. 13 (1).³ Since the Directorate found significant discrepancies in the applicants' education in terms of clinical practice in addition to substantial shortcomings in the clinical theory education relating to the treatment of children and adolescents, the applicants were required to compensate for these shortcomings by working under supervision in the specialist health service for a period of one year, cf. the Directive, Art. 14. After completing their license period and submitting documentation that the license period had been approved, their applications for authorisation were incorrectly granted pursuant to the Health Personnel Act Section 48a (1) b.

According to the Directorate, the Norwegian Psychological Association (Norsk psykologforening) informed the Directorate about concerns they had received from the professional and academic community of clinical psychologists about the academic level of the MA in psychology from ELTE in early 2016. Coincidentally, the number of applicants from ELTE graduates increased. From 2016 to 2018 (11 July), the Directorate received 123 applications from holders of MA in psychology from ELTE. It is incorrect, however, to claim that it was the increased number of applicants as such that led to the change of practice.⁴ Rather, the Directorate was prompted to request further information from Hungarian authorities to investigate concerns raised by the professional and academic community of clinical psychologists in Norway, and due to information in new applications which implied that "okleves pszichológus" was not a regulated profession in clinical psychology, as previously assumed.

On 20 April 2016, the Directorate made a request to Hungarian authorities via the IMI-system. On 26 April 2016, the Directorate received this reply from Hungarian authorities to the question of whether psychologist was a regulated profession in Hungary:⁵

No.

Psychologist is not a regulated profession in Hungary, but the psychologist qualification entitles to practice many regulated professions, such as family assistant in child welfare

³ Attachment 1: The Directorate of Health. Overview on granted authorisations and licenses 2003 to 2016. 7 applications were mistakenly granted after the change of practice in 2016.

⁴ ESAs letter, § 18.

⁵ Attachment 2: Correspondence through IMI 26 April 2016.

services, psychological advisor, methodological consultant, tutor in children temporary homes. Please also note that clinical psychologist "klinikai szakpszichológus" is a regulated profession in Hungary.

The Directorate changed its practice upon receipt of this information, and started rejecting applications from graduates with MA in psychology from ELTE. After the change in practice in 2016, however, seven licensed persons were mistakenly granted authorisation. Under Norwegian administrative law, there is a limited access to withdraw permissions, and these permissions have not been reversed out of consideration for the applicants.

The Ministry regrets that the correct information above was not known to the Directorate at an earlier stage, to decide previous applications in accordance with the Directive and national regulations.

3.2 The process

The Authority correctly summarise the processing time in the three complainants' cases (80103, 79661 and 81375).⁶ The Ministry has not been able to identify and trace the case processing of applicant in case 81656. The Ministry wishes to give a short presentation of the process further to the IMI-response from Hungary on 26 April 2016.

The Directorate made another inquiry through the IMI-system March 17, 2016. The request was answered September 30, 2016.⁷ The Hungarian authorities specified that only specialised clinical psychologists (klinikai szakpszichológus) could work in Hungarian health care establishments. Candidates in such specialisation or committed to start such specialisation, could work under supervision of a specialist clinical psychologist.

52 Norwegian ELTE-graduates got their applications rejected September 22, 2016. 49 of them made a common complaint on November 2, 2016. At least three of the complainants in the case before the Authority were among these.

The Directorate of Health decided to uphold its decisions and forwarded the complaint to the Norwegian Appeal Board for Health Personnel July 21, 2017. The Appeal Board upheld the decision of the Directorate of Health. Four of the 49 cases were decided December 15, 2017. The rest of the 45 decisions were made March 13 and 14, 2018.

3.3 The subsequent development

To arrive at a reasonable solution for the candidates affected by the Directorate's change of practice, the Ministry of Health and Care Services twice commissioned the Directorate to investigate possible ways of qualifying the candidates for authorisation as psychologists.⁸

⁶ The Authority's letter paragraphs 48-54.

⁷ Attachment 3: Correspondence through IMI 30. September 2016

⁸ Attachment 4: Letter from the Ministry to the Directorate 3. July 2017, Attachment 5: Letter from the Ministry to the Directorate 15. February 2018, Attachment 6: Letter from the Ministry to the Directorate 6. November 2017, Attachment 7: Letter from the Ministry to the Directorate 8. June 2018, Attachment 8: Letter from the Ministry to the Directorate 19. July 2018.

The first program concerned the 16 candidates who had already been granted licences before the Directorate changed its practice. These candidates were offered a one-year qualification programme starting in April 2018.⁹ This programme comprises eight seminars, individual evaluations and suitability assessments. Candidates can continue their work during the qualification programme. The programme is voluntary. Candidates who complete the programme in a satisfactory manner will be qualified to apply for authorisation as a “psykolog” (clinical psychologist).

The Ministry do not share the view of the ELTE-representative who stated that 90% of the program already had been covered by the ELTE-program.¹⁰ On the contrary this program has been made to specifically target the shortcomings in the ELTE-graduates’ education.

The second qualification programme of July 3 2017 concerned candidates who started or completed their master’s degree programme at ELTE before the recognition practice was changed in 2016. An expert panel, comprising of representatives from the four universities that offer the professional study, was appointed by the Directorate. The expert panel advised, however, that applicants with a MA in Psychology from ELTE, due to their substantial shortcomings discussed above, would have to undergo the last two and a half years of the programme of professional study in psychology in order to qualify for authorisation as “psykolog” (clinical psychologist).¹¹ This would go beyond the two-years MA in question which the applicants hold from ELTE, and would amount to a “fresh, complete program of education and training”. Under the circumstances, and given the Directorate’s previous error in recognising applications with the same MA, the Ministry considered that it would place too heavy a burden on the affected applicants. In order to solve the concrete matter, the Ministry therefore put in place a costly and intensified study of 14 months as a one-off measure.¹² This programme will start up in late autumn 2018,¹³ and consists of an introductory course, compulsory teaching seminars and supervised practical training in the specialist health service. Completion of the program will qualify the candidates to apply for authorisation as a “psykolog” according the Health Personnel Act Section 48 a litra d.

It has been important for the Norwegian authorities to offer a solution to the candidates who had arranged their affairs based on the previous practice. The latter qualification programme will cost about NOK 245 million and illustrates that the Norwegian authorities have been willing to go far to offer the affected persons a solution. .

The Ministry contests the Authority’s suggestion that the qualification programme constitutes an implicit acknowledgment that an “okleveles pszichológus” and “psykolog” (clinical psychologist) are the same profession.¹⁴ The qualification programme is an extraordinary and costly one-off measure introduced to find a reasonable solution for those affected by the previous wrongful practice to resolve this concrete matter. Norway is under no legal obligation

⁹ Attachment 9: Offer 13. November 2017

¹⁰ The Authority’s letter paragraph 46.

¹¹ Attachment 10: Letter from the Directorate to the Ministry of 5, December 2017

¹² Attachment 11: Letter from the Ministry to the Directorate of 15, February 2017

¹³ <https://helsedirektoratet.no/nyheter/kvalifiseringsprogram-for-elte-kandidater-opprettes-til-hosten>

¹⁴ The Authority’s letter, paragraph 128

to provide such a programme, and it is offered outside the Directive's provisions on compensation measures.

4 The Norwegian system

4.1 Background

The EU Commission concluded during the Mutual Evaluation for psychologists that there is a significant diversity among the profession across the EEA.¹⁵ The Norwegian profession of “psykolog” (clinical psychologist), and the responsibilities and privileges of the group in health and care services, reflects this diversity, as it differs from other countries.

In Norway, there has been a gradual professionalisation of the clinical psychological practice, with an increasing independent role and widening responsibilities since the first authorisation requirements within clinical psychology were established in 1938. A psychology act regulating the title of “psykolog” was adopted in 1973. It gave “psykologer” specific rights and duties as health care professionals, including the opportunity to receive reimbursements from the state.

The continual development in the clinical psychologists' role and responsibilities in the health and care services means that Norwegian “psykologer” are trained with a clear orientation towards examination and treatment of mental disorders and to be able to work clinically and independently in different parts of the health and care services.

This distinct independent role was further highlighted when the professional study programs were exempted from the general introduction of bachelor (BA) and masters (MA) degrees (the Bologna model). As a result, the training of clinical psychologists remained a six-year professional study program, while most other educations and training were changed to BA and MA degrees. The reasons for this exemption were set out in a Government White Paper (Ot.prp. No. 11 (2001-2002))¹⁶:

The professional studies in psychology should provide clinical competence as the basis for authorisation as a psychologist. Training in practical skills is time consuming, in part because it follows from this subject area's particularity that students must follow patients and clients over a long period of time. This is also a clinical education where reduced study time will have negative consequences for the ability of the graduates to function professionally.¹⁷

The special status of clinical psychologists in Norway has been highlighted recently. The Norwegian Health and Care Services Act largely leaves it up to the municipalities to decide what professions they must have attached. However, the Ministry has recently concluded that in some cases, specific competence and skills is fundamental to provide necessary and sound

¹⁵ EU Commission: Mutual evaluation of regulated professions, Report based on information transmitted by Member States discussion in the meeting of March 2015, para 7.

¹⁶ Attachment 12: St.meld. nr. 11 (2001-2002) Kvalitetsreformen. Om vurdering av enkelte unntak fra ny gradsstruktur i høyere utdanning.

¹⁷ The Ministry's own translation

health care services, and from 1 January 2020 it will be statutory for all municipalities to have “psykologer” (authorised clinical psychologists) as part of its health and care services.¹⁸

4.2 Non-clinical educational programs in the field of psychology

In Norway, there is a distinct separation between the professional study programs, which leads to the title “psykolog” (clinical psychologist), and other courses and programs in the field of psychology.

Norwegian universities and university colleges offer a range of different non-clinical individual courses, one-year programs and BA and MA degree programs in general psychology. None of these degrees are clinically oriented to a significant degree. They do not entitle graduates to authorisation as a “psykolog” (clinical psychologist).

Persons with a BA or MA degree in general psychology can work in many areas in Norway, for example in consultancy and counselling, administrative work, planning, preventive health care, research, dissemination, teaching, management and organisation development. They can also work in the healthcare services as health personnel provided it is in accordance with the requirements for professional responsibility and diligent care that can be expected based on their qualifications, the nature of their work and the situation in general.¹⁹ Such positions are regularly announced in advertisements specifying that applicants with a degree in general psychology are welcome to apply.²⁰

A person with a master's degree in psychology cannot work as “psykolog” (clinical psychologist). If he/she wants to become a “psykolog”, he or she must apply for admission to the professional study program described in section 4.3.1. To the Ministry's knowledge, few of the individual subject courses from BA and MA degrees in psychology programs will be recognised as part of the different professional study programs.

4.3 The education and profession of “psykolog” (clinical psychologist)

4.3.1 The professional study program

The professional study programs are intended and structured to prepare students for clinical work and give them the qualifications they need to perform the tasks and activities of the psychologist profession. This includes independent assessment, diagnosis and treatment of patients. To provide students the necessary clinical training, the programs consists of clinical theory and supervised practical training. This combination forms the basis for the independent duties that clinical psychologists perform in the Norwegian healthcare system. These are the only educations in Norway that entitle graduates to authorisation as a “psykolog” (clinical psychologist).

There are four educational institutions that offer this six-year professional study in psychology.

The content of the program is not regulated. The institutions that offer the professional study programs have come to an agreement on a set of core competencies and skills that all students

¹⁸ Lov 16. juni 2017 nr. 55 om endringer i helselovgivningen (overføring av det offentlige tannhelsetjenesteansvaret, lovfesting av kompetansekrav m.m.).

¹⁹ Health Personnel Act Section 4

²⁰ Attachment 13: Examples of job listings

must possess after completing their education. This means that, whilst differences exist, there is also a substantial degree of harmonisation between the different professional study programs, even in the absence of government regulations. These core competencies are listed in the National Plan for the Professional program in clinical psychology.²¹

The Norwegian Regulations concerning degrees and professional studies, protected titles and nominal length of study at universities and university colleges currently regulate which educational institutions can offer the program.²²

4.3.2 The duties of a “psykolog” (clinical psychologist)

In general, Section 4 of the Health Personnel Act requires that health personnel shall conduct their work in accordance with the requirements for professional responsibility and diligent care that can be expected based on their qualifications, the nature of their work and the situation in general. It is stated by the Directorate in IS-8/2012 that standards for healthcare personnel with regard to professional sound practice must be based on what should be expected, given the healthcare provider's qualifications, the nature of the work, and the general circumstances. When evaluating these qualifications, it is necessary to consider the content of the healthcare provider's education and the requirements for authorisation. Authorisation have certain standards for education, etc. These help to ensure that healthcare personnel groups have the essential skills for professional practice in their field.

The Health Personnel Act Section 48 (1) t regulates the title "psykolog" (clinical psychologist). The preparatory works to the Act describes the professional practice of clinical psychologists as follows:

*Their professional practice includes the assessment, diagnosis and treatment of mental disorders. Psychologists have an independent and direct responsibility for patients. Their professional role entails a risk of psychological injuries.*²³

A “psykolog” can examine, diagnose and treat patients. They are entitled to start their own practice and provide health services independently when they're authorised.

“Psykologer” have an independent referral right to the specialist health service in mental health care, cf. the National Insurance Act section 5-7 third paragraph. They can also write referrals that lead to reimbursements from the State, see the Proposal 59 L (2014-2015), paragraph 7.

Examples of tasks a “psykolog” can carry out independently:

- assessing, diagnosing and treating mental disorders in children and adolescents

²¹ Attachment 14: Nasjonal plan for profesjonsutdanning i psykologi

²² Forskrift 16. desember 2005 nr. 1574 om grader og yrkesutdanninger, beskyttet tittel og normert studietid ved universiteter og høyskoler (<https://lovdata.no/dokument/SF/forskrift/2005-12-16-1574>)

²³ Ot.prp. nr. 13 (1998-1999) punkt 15.4.1. <https://www.regjeringen.no/no/dokumenter/otprp-nr-13-1998-99-/id159428/sec1>

- suicide risk assessment²⁴
- assessing, diagnosing and treating ADHD in children
- assessing whether the medical requirements for holding a driver's license are met in connection with mental illness, cf. the Health Personnel Act Section 34
- assessing intellectual disability and developmental disorders in children and adults
- preparing treatment plans and advising next-of-kin and the municipal support system
- assessing capacity to work in adults whose functional ability is impaired by mental illness or cognitive impairments
- assessing cognitive impairment in patients suffering from neurological illness

The independent role of "psykologer" in Norway is related to the geography and population distribution of the country. Norway has a challenging geography with a large population living in rural areas. This is coupled with a decentralised administrative level, with 422 municipalities. In addition, a number of service provisions in the Norwegian health and care services has been transferred from the specialist to the primary care level.²⁵ These conditions put specific demands on the clinical skills and independency of psychologists working in Norway.

The Norwegian Mental Healthcare Act reserves certain particularly invasive decisions relating to *coercive measures* to "psykologspesialister" (clinical psychologists with specific specialist training) and physicians. These provisions, however, do not limit the right of "psykologer" to diagnose and treat mental disorders independently.

4.3.3 The education and profession of "psykologspesialist"

A "psykolog" (clinical psychologist) can choose to specialise in one or more fields to become a psychology specialist. This further education program is a professional specialisation program comprising of a minimum of five years of relevant work, courses and supervision in addition to scientific work.

Clinical psychologists can specialise in the following fields: adult psychology, neuropsychology, psychological work with substance abuse and addiction problems, community psychology, geriatric psychology, family psychology, habilitation, child and adolescent psychology, psychology with psychotherapy, occupational psychology and organisational psychology. The specialist training program and specialist approval are not subject to public regulation, and are administered by the Norwegian Psychological Association.

The specialist clinical training program must be kept separate from the PHD-programs in psychology. The PDH-programs are three-year theoretical programs that is open both to "psykologer" (clinical psychologists) and others with a master's degree in general psychology.

²⁴ Sosial- og helsedirektoratet: Nasjonale retningslinjer for forebygging av selvmord i psykisk helsevern, IS-1511, 2008, page 18. (<https://helsedirektoratet.no/Lists/Publikasjoner/Attachments/3/Nasjonal-faglig-retningslinje-for-forebygging-av-selvmord-i-psykisk-helsevern-IS-1511.pdf>)

²⁵ St.meld. nr. 47 (2008–2009) Samhandlingsreformen. Rett behandling – på rett sted – til rett tid. (<https://www.regjeringen.no/no/dokumenter/stmeld-nr-47-2008-2009/id567201/sec1>).

5 The Hungarian system

5.1 Overview

Hungary distinguishes between the following three professional categories:

- “Okleves pszichológus” (general psychologists)
- “Klinikai szakpszichológus” (specialised clinical psychologist) with a basic post-graduation specialisation
- Psychotherapist or Addictologist (specialised clinical psychologist with a higher post-graduation specialisation)

Semmelweis University provide a comprehensive presentation of the Hungarian system for training psychologists on its web pages.²⁶ Page 13 of the presentation gives an overview of the educational structure, with reference to whether the education is regulated by health law or educational law, and whether the programs give healthcare qualifications.

An “okleves pszichológus” (general psychologists) has a degree in arts and humanities and is not qualified nor authorised to provide healthcare services independently. A “klinikai szakpszichológus” (specialised clinical psychologist) has a healthcare degree and is qualified and authorised to provide healthcare services independently.

The preparatory works to an amendment in 2009 of Section 103 of the Hungarian Health Act emphasised that psychologists having a degree in arts and humanities (“okleves pszichológus”) must be distinguished from specialised clinical psychologist having a healthcare degree:²⁷

The amendment is also fundamental in the sense that it appropriately distinguishes the psychologist having a degree in arts and humanities from the specialized clinical psychologist having a healthcare degree, as the various healthcare related legal instruments do not use these terms appropriately.²⁸

Hungary contributed with a national report of as part of the EU Commission's mutual evaluation for psychologists.²⁹ The report describes the different educations and professions in the field of psychology, and provides:

²⁶ Attachment 15: Éva Urbán, Semmelweis University Training system for psychologists; The path to psychotherapy certification exam, 1 (translated by Hurtigoversetter) <http://semmelweis.hu/klinikai-pszichologia/oktatas/felnott-es-gyermek-klinikai-es-mentalhigieniai-szakpszichológus-szakkepzes/>

²⁷ Preparatory works to Act 2009 Art. 41 amending Art. 103 of the Health Act of 1997. (“2009. évi CLIV. törvény 41. §-ának indokolása - az egyes egészségügyi tárgyú törvények módosításáról”). See <http://www.parlament.hu/irom38/10977/10977.pdf> page 117.

²⁸ Translated from Hungarian: «4 INDOKOLÁS

A jelenleg hatályos törvényszöveg hiányossága egyrészt a pszichoterápiás tevékenység fogalmának, valamint az egyes képzettségi szinteknek a hiányos meghatározása. A módosítás abból a szempontból is lényeges, hogy megfelelően elhatárolásra kerüljön a bölcsész végzettséggel rendelkező pszichológus és az egészségügyi végzettségű klinikai szakpszichológus, ugyanis a különböző, egészségügyi jogi jogszabályok nem használják megfelelően a fogalmakat.»

²⁹ Attachment 17: National Report on the Psychology profession, Hungary.

Clinical psychologist (and other professions for which the training criteria are regulated in the legislation on health training laws) can be considered as an independent profession

It is undisputed that “okleves pszichológus” (general psychologists) is not a regulated profession, and that “Klinikai szakpszichológus” (specialised clinical psychologist) is a regulated profession under Section 103 paragraph 2 of the Health Act of 1997.

5.2 The education and profession of “okleves pszichológus”

5.2.1 MA in psychology

The basic training in general psychology in Hungary consists of a BA degree in liberal arts in psychology, leading to a specialisation as a Human Behaviour Analyst.³⁰

Holders of a BA in psychology can pursue either MA in psychology (“okleveles pszichológus”), which is a degree in arts and humanities, or a MSc in health psychology (“okleveles egészségpszichológus”), which is a degree in science.

After graduation, holders of MA in psychology or MSc in health psychology can work as organisational psychologists, consultant psychologist, health enhancing psychologists, pedagogical psychologists, and sexual psychologists.³¹ They cannot, however, provide healthcare services under Hungarian law as clinical psychologists.

5.2.2 The MA-program at ELTE

The applicants in the present case have a MA in psychology from ELTE university. Admission to this MA is closed for Hungarian citizens.³²

To be admitted, applicants must have a BA in “psychology related sciences”.³³ The Norwegian Directorate of Health have made an overview of the Norwegian ELTE-student’s different degrees,³⁴ and found that they have various BAs. The wide range of accepted candidates to the MA-program at ELTE is especially emphasised by two Norwegian ELTE-students. The first candidate was accepted to the MA program with a BA in religion and some credits in psychology, and the second was accepted without a BA-degree, only credits in various subjects including psychology.³⁵ Most of the Norwegian candidates have a BA-degree in general psychology from Norway. The Ministry recalls that BAs in Psychology from Norway are not clinically oriented.

³⁰ Regulation 18/2016 Annex 3 II/9 (18/2016. (VIII. 5.) Ministry of Human Resources (MHR) regulation on higher education specialisations, requirements for undergraduate and Master’s level qualifications and graduate outcomes, and common requirements for teacher preparation and the teacher requirements for individual teaching specialisations and graduate outcomes, an amendment to MHR regulation 8/2013 (I. 30), Section 9.

³¹ Attachment 15: Semmelweis on the psychologist profession, page 13

³² Attachment 18: ELTE University admissions webpage, print September 26, 2018

³³ Attachment 18: ELTE University admissions webpage, print September 26, 2018

³⁴ Attachment 19: The Norwegian Directorate of Health, overview of BA-programs (anonymised), undated.

³⁵ Attachment 20: Excerpt of applications (anonymised), example 1, Attachment 21: Excerpt of applications (anonymised), example 2

The Ministry emphasises that all “okleveles pszichológus” are trained as generalists.³⁶ In Regulation No 18/2016 the purpose of the MA-degree is described as follows:

The aim of the training is to educate skilled psychologists who are familiar with several branches of psychology based on their knowledge gained in the different scientific fields of psychology”³⁷

It is therefore incorrect to refer to their degree as a “Master`s degree in Clinical and Health Psychology”.³⁸ The correct description is a MA-degree in Psychology, with specialisation in Clinical and Health Psychology.

5.3 The education and profession of “klinikai szakpszichológus”

5.3.1 Basic post-graduation specialisation in clinical psychology

“Klinikai szakpszichológus” (specialised clinical psychologist) is a regulated profession under Section 103 (2) of the Health Act of 1997:

Specialized clinical psychology shall be applied to

- a) retain and restore psychological well-being,*
- b) diagnose, examine and discern the causes of psychological disorders,*
- c) conduct the psycho-diagnostic tests required to diagnose certain disorders, and*
- d) apply psychological methods to correct psychological disorders.*

To become a “klinikai szakpszichológus” (specialised clinical psychologist), with the right to provide “healthcare services”, holders of MA in psychology or MSc in health psychology must undertake basic post-graduation studies in specialised clinical psychology.³⁹ Candidates are called “jelölt”, and can pursue such studies in adult clinical and mental hygienic psychology (48 months), child and youth clinical psychology and mental health psychology (48 months), neuropsychology (48 months), and applied health psychology (36 months).⁴⁰

The studies for adult clinical psychology and mental hygiene, for instance, include a 6-semester long theoretical training *inter alia* in psychopathology and clinical psychodiagnostics, see Regulation 22/2012 Annex 8:

1.3. Training program: 48 months of specialist training, including:

- a) Onsite clinical psychodiagnostic practicum*
- b) practicum in development of professional personality*

³⁶ Attachment 17: Hungary`s National Report page 1 and The Authority`s letter paragraph 28.

³⁷ Attachment 22: Hungarian regulation No. 18/2016, subparagraph 8

³⁸ The Authority`s letter paragraphs 1, 2, 5, 14, 19, and 217.

³⁹ Regulation 22/2912 Section 6 (22/2012. (IX. 14.) Ministry of Human Resources regulation on attaining higher level specialised healthcare qualification 6§ (1).

⁴⁰ Regulation 22/2012 Annex 1, point 6.

- c) *clinical psychology supervision*
- d) *basic psychotherapy practicum*
- e) *parapsychology practicum at psychiatric care institution*
- f) *clinical psychology practicum in the medical specializations in the area of applied psychology*
- g) *psychotherapy supervision*
- h) *6-semester long theoretical training in a predetermined topic*
- ha) *health promotion, health damaging behaviour, theories of stress*
- hb) *psychopathology, pathopsychology, basics of neuroscience*
- hc) *clinical psychodiagnostics, research methods*
- hd) *psychotherapy: propaedeutic phase, individual methods*
- he) *cognitive behavior therapy*
- hf) *evidence based methods in health psychology and psychotherapy*

To the Ministry's knowledge, basic post-graduation specialisation in clinical psychology is only offered in Hungarian.⁴¹

5.3.2 Higher post-graduation specialisation

Specialised clinical psychologists can take a post-graduate higher specialisation in psychotherapy or addictology.

Psychotherapy is a regulated profession under Section 103 paragraph 1 and 3 of the Health Act of 1997:

(1) Psychotherapy is a therapeutic process based on a variety of scientifically-founded methods, used to treat persons with psychological or psychosomatic disorders in multiple therapeutic sessions, each with a set time-frame, which may be provided for individuals or groups by a physician or a graduate psychologist having the required qualification.

(...)

(3) Psychotherapy shall require the completely voluntary participation of both patient and therapist.

To become a psychotherapist, a "klinikai szakpszichológus" (specialised clinical psychologist), must undertake further two to three years of higher post-graduation studies in psychotherapy. Admission and content of the psychotherapy extended education is regulated by Annex 9 to 22/2012. (IX. 14.) MHR regulation:

⁴¹ Attachment 23: Letter from Hungarian authorities July 30 2018

2.1. PSYCHOTHERAPY I.

2.1.1 Admission criteria

- a) Adult clinical and mental hygiene specialization or*
 - b) Child and youth clinical and mental hygiene specialization*
- specialist examination*

2.1.2. Duration of study: 72 months: 48 months basic training + 24 months extended training

2.1.3. Training program: 24 months of specialist training, including:

- a) participation in the theoretical and practical component of clinical phase course*
- b) participation in method specific theoretical and practical training*

(...)

2.2. PSYCHOTHERAPY II.

2.2.1 Admission criteria

- a) Neuropsychology specialization, or*
 - b) Applied health psychology specialization*
- specialist examination*

2.2.2. Duration of study: 72-84 months: 36-48 months basic training + 36 months extended training

2.2.3. Training program: 36 months of specialist training, including:

- a) participation in the theoretical and practical component of clinical phase course*
- b) participation in method specific theoretical and practical training*

To the Ministry's knowledge, higher post-graduation specialisation is only offered in Hungarian.⁴²

5.4 Conditions for beginning and providing “healthcare services” in Hungary

5.4.1 Healthcare services in general

Hungarian health legislation sets out several conditions for beginning and providing “healthcare services”, see Chapter V, Title 1 of the Health Act of 1997. Healthcare services are defined in Section 3 litra e as:

⁴² Attachment 23: Letter from Hungarian authorities July 30 2018

all activities which aim to deliver examination, treatment, continuous care, nursing care and medical rehabilitation, to alleviate pain and suffering, furthermore to perform the work-up of findings from the patient's investigations, in the interest of promoting health; preventing, detecting early and treating disease; managing life-threatening conditions; improving a condition arising as a result of a disease or preventing further deterioration of health; included shall be all activities related to medicines, therapeutic appliances and balneology as provided for by separate pieces of legislation; ...

Section 108(1) sets out that healthcare services shall be begun and provided only in possession of a license of operation:

Healthcare services shall be begun and provided only in possession of a license of operation issued by the health authority, and only in accordance with the conditions set forth in the license.

5.4.2 Clinical work as a psychologist

The Commentary on Regulation 60/2003 provides that:

In the field of healthcare, a person can only carry out on their own psychologist activities with a degree in specialized psychology. Based on EMMI (Ministry of Education) 22/2012. (IX. 14.)⁴³

It follows that only "klinikai szakpszichológus" (specialised clinical psychologist) can work independently in a clinical setting.

The Health Act Section 110 (5) and (6) provides that a person who does not possess specialised healthcare qualifications, may "participate" in the provision of healthcare services "under the supervision and in keeping with the instructions of a person" who is qualified and listed in the operations registry.

(5) A person who does not possess the specialized healthcare qualifications to provide healthcare services also may participate in the provision of said services under the supervision and in keeping with the instructions of a person who meets the conditions set forth in Subsection (1). The right of the supervisor to issue instructions shall be limited to the scope of said supervisor's professional competence.

(6) The person set forth under Subsection (5), who participates in the provision of healthcare services in a sphere that does not correspond to his professional qualifications, shall begin and conduct said activity only following prior and appropriate education.

In keeping with Section 110 (5) and (6), Regulation 60/2003, provides that:

Practicing psychological activities in health care can only be carried out, regardless of the form of the health care activity, including all cases when a psychologist is required by this regulation:

⁴³ Attachment 24: Commentary on Regulation 60/2003 Annex 2 - "Specialised psychology" heading (60/2003 (X. 20.) ESzCsM [Ministry of Health Social and Family Affairs] regulation on Minimum Professional Conditions for the Provision of Healthcare Services)

- a) *Independently only by a psychologist with a special postgraduate qualification;*
- b) *a psychologist candidate for a special postgraduate qualification under the guidance or close supervision of a psychologist with a special postgraduate qualification; or*
- c) *a psychologist under the guidance or close supervision of a psychologist with a special postgraduate qualification in case they undertake to become a candidate for a special postgraduate qualification within 2 years of their legal relations regarding the healthcare activity.*

Note: the condition regarding the guidance or close supervision is mandatory from 31 March, 2014.⁴⁴

This regulation affirms that only the “*klinikai szakpszichológus*” (specialised clinical psychologist) can work independently with patients, while a “*jelölt*” (specialised clinical psychologists under training), or someone committed to becoming a “*jelölt*”, can participate in guided or supervised clinical work as a part of their education.

In keeping with the Health Act Section 110 (5), Regulation 60/2003 stipulates that the “*jelölt*” is not authorised to issue a psychological opinion or give clinical psychological advice independently:

A psychologist / specialized psychologist candidate is not authorised to issue a psychological opinion. If in patient care specialist psychological advice is necessary, it needs to be endorsed by a specialist psychologist.

The Hungarian authorities summarised this in the National report page 1-2:

Only psychologists with a specialisation in clinical psychology are entitled to deliver health care services independently.

...

Psychologists who do not hold a qualification in clinical psychology can participate in healthcare-related activities only under the supervision of a clinical psychologist and only if they are committed to enter into the specialisation training within a certain time period.

The Ministry wishes to comment on the Authority’s reference to the Hungarian regulation No. 18/2016, emphasising subparagraph 8.1.3 of the regulation, which states that an “*okleveles pszichológus*”, is “able to work independently and carry out multilateral and critical analysis in the field of clinical and health psychology”.

⁴⁴ Attachment 24: Commentary on Regulation 602003.

This cannot be understood as a contradiction to the Hungarian law which clearly establish that only “klinikai szakpszichológus” can work independently with clinical tasks. This is rather a description of the MA-programs academic and theoretical aim. The Ministry recalls that the MA-program in psychology is a degree in arts and humanities, and not a healthcare qualification.

5.4.3 The operational registry

The Health Act Section 110 (1) stipulates that only persons having professional qualifications and who are listed in the operations registry may conduct healthcare activity:

Healthcare activity, with the exception of the cases set forth in Subsections (2) and (4), shall be conducted by a person who has the professional qualifications that authorize for practicing said activity or who has professional qualifications attainable without healthcare training, and who is listed in the operations registry.

Section 110 (3) reiterates that healthcare activity can only be conducted independently further to proper registration in the operations registry:

Activity conducted independently as set forth in Subsections (1) - (2) may begin after registration of the specialized professional qualifications in the operations registry.

The conditions for being registered in the Operational Registry of Healthcare Workers are set out in Section 112.

The operations registry must be set apart from the basic registry. Only persons listed in the operational registry can conduct healthcare activity independently, whereas persons merely listed in the basic registry cannot do so. It is thus imprecise when the Authority in paragraph 39 claims, based on a statement procured by one of the complainants in this case, that “[b]oth types of Hungarian psychologists (“okleveles pszichológus” and “klinikai szakpszichológus”) can be registered as “health professionals”. It follows from the Health Act of 1997 that an “okleveles pszichológus” cannot be registered in the operations registry, which is the required registry to provide “healthcare services” as a clinical psychologist. An “okleveles pszichológus” cannot be registered in the basic register either. This follows from information given by the responsible body in Hungary (The State Healthcare Supply Center), obtained by a Norwegian speaking Hungarian lawyer on request from the Ministry.⁴⁵ The Center states that:

The specialized qualification called “psychologist having a masters diploma in the liberal arts” as mentioned in your query is not recognized as a specialized qualification in healthcare, and the person concerned having this specialized qualification cannot be entered into the basic registry, in the case of an application submitted to this end such an application is turned down, accompanied by references to the relevant laws.

5.4.4 Comparison and conclusions

The Ministry has procured an assessment from the Department of Clinical Psychology at the University of Bergen, comparing the Hungarian basic post-graduate specialisation in clinical

⁴⁵ Attachment 25: Answer from the Hungarian Healthcare Service Center, 25.9.18. Translated by the Norwegian speaking lawyer Tamás Fehér from the Hungarian law firm Jalsovszky.

psychology and the professional study program in psychology at the University of Bergen. The assessment concludes that:

*Overall, we find significant overlap between the Hungarian licensing education and the Norwegian professional education, both with regard to topics, level and scope.*⁴⁶

It follows from the above that holders of MA in psychology from ELTE have a degree in arts and humanities which does not qualify them nor authorise them to provide clinical psychological healthcare services independently in Hungary, such as diagnosing and examining patients. In order to be qualified and authorised, they would need to embark upon three to four-year full-time post-graduation basic specialisation studies in clinical psychology in Hungarian, with the option of additional two to three-year extended specialisation to become psychotherapists. Only after completion of such independent studies, with a successful exam, fulfilling all requirements to be licensed and registered in the operational registry, would a person be qualified and authorised to provide clinical psychological healthcare services independently in Hungary.

6 Applicable national law

6.1 Introduction

The provisions of the EEA Agreement on the approval of professional qualifications are incorporated into Norwegian law through the Health Personnel Act and the Norwegian Regulations concerning authorisation, licensing, and specialist approval for health personnel with professional qualifications from other EEA countries or Switzerland (the EEA Regulations). We will elaborate on these provisions below.

Persons who meet specific requirements concerning education, practical training and age, and who are not considered to be unfit for the profession, are entitled to authorisation, cf. the Health Personnel Act Section 48 a). Authorisation or a license under Section 48a, cf. Section 48 first paragraph letter t), entails a right to use the professional title of psychologist. However, authorisation or a license is not a condition for providing psychological healthcare in the health service. The decisive factor is whether a person actually has the qualifications that make him/her suited to carry out the duties in question, cf. the requirement for professional responsibility set out in Section 4 of the Health Personnel Act. Only some duties or functions are reserved by law for psychologists with continuing education as specialists, see 4.2 and 4.3.

Authorisations and licenses are issued by the Norwegian Directorate of Health. This body may not grant an authorisation or license without a legal basis in the Health Personnel Act, i.e. if an applicant does not meet the requirements. Rejections can be appealed to the Norwegian Appeal Board for Health Personnel.

⁴⁶ Attachment 26: Letter from the Department of Clinical Psychology, Faculty of Psychology, University of Bergen to the Ministry, Attachment 27: attachment to the letter, Attachment 28: attachment 2 to the letter.

6.2 The authorisation system

The rules concerning authorisation were put in place to safeguard patients. The objective of the Health Personnel Act is “to contribute to safety for patients and quality within the health service as well as trust in both health personnel and the health service,” cf. Section 1. The preparatory works to the Act states that the authorisation system is a public policy instrument, intended to ensure that the health service has the necessary expertise and quality. Professional titles promote predictability and guarantee that those who use them hold certain qualifications. This contributes to quality in the health services and patient safety. It is also stated that

the main purpose of the authorisation scheme is to ensure patient safety. The authorisation scheme is intended to ensure that health personnel have the qualifications required to perform a certain professional role. In professional practice, the authorisation serves as a guarantee that health personnel who hold a certain title have a certain expertise. This means that health personnel who use a protected title have a common educational background.⁴⁷

Patients will be safeguarded by the authorisation ensuring that health personnel whose professional practice is particularly independent, hold certain qualifications.

6.3 Right to authorisation

Applicants with foreign education are entitled to authorisation as "psykolog" (clinical psychologist) in the following cases:

- If there is an agreement on mutual recognition of professional qualifications, cf. Section 48a first paragraph litra b.
- If the applicant has taken a health personnel education that is equivalent to the Norwegian professional study program, cf. Section 48a first paragraph litra c.
- If the applicant's health personnel education, supplementary education and work experience together impart the necessary skills, i.e. the same qualifications, as a psychologist educated in Norway, cf. Section 48a first paragraph litra d.

The Ministry will describe the first ground for recognition in greater detail below, as the Ministry consider that this is the only relevant ground for recognition in the present cases.

6.4 Agreement on mutual recognition (the EEA Regulations)

An applicant is entitled to authorisation if he or she “has passed an examination abroad which is recognised in accordance with an agreement on mutual recognition pursuant to Section 52”. Norway has an obligation under the EEA Agreement to recognise health personnel from other EEA countries, provided that the person applying for authorisation can present specific documentation that the education taken meets the requirements set out in the Directive. These rules are implemented in Norwegian law through the EEA Regulations. In the complaint cases

⁴⁷ Attachment 29: Ot. prp. nr 13 (1998-99) section 14.2 (the Ministry's own translation).

in question, the applications were rejected on this basis on the grounds that the applicants are not fully qualified in Hungary to pursue the same profession as authorised psychologists in Norway, and are therefore not entitled to authorisation under the Directive.

6.5 License

Pursuant to Section 49 of the Health Personnel Act, health personnel who do not have the right to an authorisation pursuant to section 48 may, subject to the Directorate's discretion, be granted a license. Section 49 states that "The license may be limited in time, to a certain position, to certain types of health care or in some other way" (our translation). A license may only be granted to health personnel who are suited in accordance with the type of license granted and the tasks it covers. It follows from long-standing administrative practice that a license will be a relevant option for people with some minor shortcomings in their education for which they must compensate by practical training before they can be granted an authorisation.

A license may be granted to health personnel who have passed an examination in a foreign country that is recognised in accordance with an agreement on mutual recognition pursuant to Section 52, and can be granted as a compensation measure (adaptation period) under Article 14 of the Directive, cf. the EEA Regulations Section 14. In the cases at hand, the applicants were denied a license to work under supervision because this alone would not be sufficient for the applicants to gain the necessary skills and competencies.

7 The Ministry's assessment of the Directive Article 13 and 14

7.1 Article 13 has not been infringed

7.1.1 Introduction

It is the Ministry's firm view that Article 13 has not been infringed by the refusal to recognise the applicants as "psykolog" (clinical psychologist) pursuant to the Health Personnel Act Section 48a(1) b.

As a preliminary point, the Ministry recalls that the purpose of the Directive is to allow holders of professional qualifications from the home Member State to pursue "the same profession" in the host Member State, cf. Article 1. However, the Directive is "without prejudice to measures necessary to ensure a high level of health and consumer protection", cf. Recital 44 to the Preamble. Moreover, the Directive "does not detract from the power of the Member States to adopt provisions aimed at organising their health services".⁴⁸ Member States enjoys a wide discretion when ensuring a high level of public health.⁴⁹ The Court has consistently held that "health and life of humans rank foremost among the assets and interests protected by the TFEU and it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved. Since

⁴⁸ Malta Dental Technologists Association/Reynard C-125/16 (paragraph 54)

⁴⁹ Nasipoulos C-575/11 and Malta Dental Technologists Association/Reynard C-125/16

that level may vary from one Member State to another, Member States must be allowed a measure of discretion in that area.⁵⁰

The conditions for recognition are set out in Article 13. It is undisputed that the applicants do not fulfil the criteria under Article 13(1), as “okleveles pszichológus” is not a regulated profession in Hungary. It is also undisputed that the applicants do not fulfil the condition for recognition under Article 13(2) on two year professional experience, as neither of the applicants have worked as clinical psychologists in Hungary.

The contested issue is whether the applicants fulfil the conditions under Article 13(2) with respect to “regulated education and training within the meaning of Article 3(1)e”. Article 3(1)e defines “regulated education and training” as “training which is specifically geared to the pursuit of a given profession”. It clearly does not suffice that the training is subject to regulations. Nor does it suffice that the training has been specifically geared to the pursuit of any profession, such as “okleveles pszichológus”. Rather, the wording of Article 3(1)e, and the Directive’s system as such, requires that training is specifically geared to a “given profession” which the applicant seeks recognition for in the host Member State. This also follows from Article 13(2)c, which stipulates that evidence of formal qualifications must “attest that the holder has been prepared for the pursuit of the profession in question”.

The ECJ has interpreted the Directive’s terminology with respect to “the profession in question” and its synonym “that profession”. In *Malta Dental Technologists Association/Reynaud* (C-125/16) of 21 September 2017, ECJ interpreted the expression “that profession” in Article 13(1) as follows:

The expression ‘that profession’ in the first subparagraph of Article 13(1) of Directive 2005/36 must be construed as covering professions which, in the home Member State and the host Member State, are identical or analogous or, in some cases, simply equivalent in terms of the activities they cover (see, to that effect, judgment of 19 January 2006, Colegio de Ingenieros de Caminos, Canales y Puertos, C-330/03, EU:C:2006:45, paragraph 20).

In *Colegio de Ingenieros de Caminos, Canales y Puertos* (C-330/03), the ECJ construed the synonym “the profession in question” employed in Article 3(a) in the same manner:

[T]he expression ‘the profession in question’, employed in Article 3(a) of the Directive, must be construed as covering professions which, in the Member State of origin and the host Member State, are identical or analogous or, in some cases, simply equivalent in terms of the activities they cover.

The Ministry cannot see that Article 4 on the effects of recognition imply another and wider approach than the ECJ consistently applies, see *Malta Dental Technologists Association* (C-125/16) and in *Colegio de Ingenieros de Caminos, Canales y Puertos* (C-330/03). The relevant question is whether the Hungarian “okleveles pszichológus” is “identical or analogous or, in some cases, simply equivalent in terms of the activities they cover” as “psykolog” (clinical psychologist) in Norway.

⁵⁰ *Malta Dental Technologists Association/Reynaud* C-125/16 (paragraph 60) with further references, see also *Vanderborght* (C-339/15) (paragraph 71)

In order to determine whether it actually is the same profession, the Court instructed the referring court to “take account of each of the activities covered by the profession in both Member States concerned”.⁵¹ The Court also emphasised that “it falls to the host Member State to determine the conditions for pursuing a regulated profession, in compliance with EU law.”⁵² This is consistent with Recital 11 of the Preamble, which provides that “Member States should retain the right to lay down the minimum level of qualification required to ensure the quality of the services provided on their territory.” The Court warned that “to decide otherwise would amount to forcing a Member State to model the conditions for the exercise of a profession on the conditions prevailing in other Member States and would make it possible to use that directive as a means of circumventing the conditions for the exercise of regulated professions which have not yet been harmonised.”⁵³ As specified in Recital 11 *in fine* of the Preamble, the Directive “is not intended to interfere with Member States’ legitimate interest in preventing any of their citizens from evading enforcement of the national law relating to professions.”

7.1.2 The professions are not “identical or analogous or, in some cases, simply equivalent in terms of the activities they cover”

The applicants have sought authorisation as a “psykolog” (clinical psychologist) in Norway, cf. the Norwegian Health Personnel Act Section 48. The preparatory works to the Act, Ot.prp. nr. 13 (1998-1999) Section 15.4.1, describe the professional practice of “psykolog” as follows:

*Their professional practice includes the assessment, diagnosis and treatment of mental disorders. Psychologists have an independent and direct responsibility for patients. Their professional role entails a risk of psychological injuries.*⁵⁴

The principal activities of a “psykolog” consists of clinical work, including assessment, diagnosis and providing healthcare. A “psykolog” is allowed to establish private practice and provide healthcare on an independent basis. A “psykolog” can independently assess, diagnose and treat all patient groups in the health service: children, adolescents, adults and the elderly. It is emphasised that a “psykolog” can provide these forms of healthcare independently, including establish a private practice, after completing the professional study in psychology.

A “psykolog” is registered in the Norwegian Health Personnel Registry.

The MA in Psychology from ELTE is specifically geared to the pursuit of the profession “okleveles pszichológus”. In the Ministry’s view, this profession is far from being “identical or analogous or, in some cases, simply equivalent in terms of the activities they cover” as “psykolog” (clinical psychologist). The MA in Psychology from ELTE University is a degree in arts and humanities, and not a healthcare degree, cf. the Act amending regulation 18/2016.⁵⁵ The Preparatory Works to an amendment of Section 103 of the Health Act 1997 emphasises that the amendment “appropriately distinguishes the psychologist having a degree in arts and humanities from the specialised clinical psychologist having a healthcare degree”. It is also

⁵¹ Malta Dental Technologists Association/Reynard C-125/16 (paragraph 41)

⁵² Malta Dental Technologists Association/Reynard C-125/16 (paragraph 47)

⁵³ Malta Dental Technologists Association/Reynard C-125/16 (paragraph 49)

⁵⁴ Attachment 29: Ot.prp. nr. 13 (1998-1999) section 15.4.1. <https://www.regjeringen.no/no/dokumenter/otprp-nr-13-1998-99-/id159428/sec1> (the Ministry’s own translation).

⁵⁵ Attachment 22: Hungarian regulation No. 18/2016. General output descriptions and competences of academic qualifications, 56. MA Psychology Programme, number 3. Field of education: Humanities.

explained in a comprehensive presentation by Semmelweis University that the MA in Psychology “does not provide healthcare qualification and does not qualify for independent healthcare activity”.⁵⁶

An “okleveles pszichológus” can work in a number of non-regulated and non-clinical professions. Hungarian authorities list "family assistant in child welfare services, psychological advisor, methodological consultant, tutor in children temporary homes" as professions which an “okleveles pszichológus” can pursue.⁵⁷ The presentation from Semmelweis University lists organisational psychologists, consultant psychologist, health enhancing psychologists, pedagogical psychologists, and sexual psychologists.⁵⁸ An “okleveles pszichológus” cannot provide healthcare services under Hungarian law as clinical psychologist, cf. the Hungarian Health Care Act Sections 103(2), 110, 111 and 112. An “okleveles pszichológus” cannot be registered in the basic registry, cf. Section 111, or in the Operational Registry, cf. Section 112 and information from the responsible Hungarian body ((The State Healthcare Supply Center).⁵⁹ Registration in the Operational Registry is a requirement for providing healthcare as a clinical psychologist in Hungary, cf. Section 110. An “okleveles pszichológus” cannot be registered in the basic register either. This follows from information given by the responsible body in Hungary, obtained by a Norwegian speaking Hungarian lawyer on request from the Ministry.

In order to provide healthcare services in Hungary as a clinical psychologist, an “okleveles pszichológus” would have to become a specialised clinical psychologist. This transition would involve taking a full program of education and training with a duration of three to four years with theory and certified clinical practice under supervision or close guidance, pass an exam, be licensed and fulfil the requirements for being registered in the Basic Registry and the Operational Registry.

The Ministry contests that it is relevant, for the consideration of whether the MA in Psychology from ELTE is specifically geared to the pursuit of the same profession as a clinical psychologist, to assess which activities a candidate in a different education, basic post-graduate specialisation in clinical psychology, could undertake in the course of his or her supervised clinical practice. Nor is it relevant to consider which activities an “okleveles pszichológus” could undertake provided he or she is committed to start this full program of studies within two years. None of the applicants are candidates in specialised clinical psychology, nor committed to become one. Many of them do not speak Hungarian, which is the only language of instruction⁶⁰ and the language for which Hungarian patients are entitled to care, cf. the Hungarian Health Care Act. Hence, neither of them fulfil the criteria under Hungarian law to participate in supervised healthcare services.

In any event, if such activities that a candidate or committed candidate to a different study could undertake under supervision are of relevance, these activities are far from being “identical or analogous or, in some cases, simply equivalent in terms of the activities they cover”, to “psykolog” (clinical psychologist). The Ministry recalls that under the Hungarian Health Act Section 110(1), cf. Section 103, cf. Regulation 60/2003, healthcare activity (clinical

⁵⁶ Attachment 15: Semmelweis on the psychologist profession (translated)

⁵⁷ Attachment 2: Correspondance through IMI 26. April 2016

⁵⁸ Attachment 15: Semmelweis on the psychologist profession (translated)

⁵⁹ Attachment 25: Answer from the Hungarian Healthcare Service Center, 25.9.18. Translated by the Norwegian speaking lawyer Tamás Fehér from the Hungarian law firm Jalsovszky.

⁶⁰ Attachment 23: Letter from Hungarian authorities 30 July 2018

psychology) can only be provided independently by a specialist psychologist or psychiatrist. Under Section 110(5), a person who does not possess the specialised healthcare qualifications may “participate in the provision of said services under the supervision and in keeping with the instructions of” a specialised clinical psychologist or psychotherapist. In keeping with this provision, Regulation 60/2003 specifies that a qualified psychologist candidate or a committed psychologist candidate may carry out activity “only under the supervision, or close guidance of a specialised professional psychologist”. The requirement of supervision or close guidance is mandatory as of 31 March, 2014, cf. Regulation 60/2003. The supervision requirement also transpires from Amending Act No. 1 to Regulation 18/2016, which states that the candidate “is able to do psychological work under appropriate supervision in educational, interventional, medicative, rehabilitative and research institutes where clinical and health psychology related work is in progress”.⁶¹ Lastly, the Ministry recalls that under Regulation 60/2003, a committed candidate or candidate is not authorised to issue a psychological opinion or give clinical psychological advice independently:

A psychologist / specialized psychologist candidate is not authorised to issue a psychological opinion. If in patient care specialist psychological advice is necessary, it needs to be endorsed by a specialist psychologist.

The Authority appears to discount the requirement of supervision or close guidance as “part of the employment regulation (concerning healthcare establishments)” which “originates in labour law and not in health law”, allegedly concerning “an organisational matter at the workplace, rather than a patient safety issue”, which “does not affect the essential characteristics of the profession”.⁶² The Authority also questions whether the supervision requirement applies to private practices.⁶³ These assertions are mistaken. As the Ministry spells out above, the requirements of supervision originates in the Hungarian Health Act of 1997, Section 110(5) and (6). The Act applies to all “health care services providers operating” and “healthcare activities pursued” in Hungary, regardless of whether they are publicly or privately funded, cf. Section 4. The purpose of the Act is clearly aimed at patient safety. Section 1 stipulates that the purpose, *inter alia*, is to (a) “foster the improvement of health of the individual, and thereby, of the population”, (d) “define the general professional requirements and guarantees of quality of health services, regardless of the legal status of service providers and the funding of services” and attain (f) “public health objectives”. Moreover, further to Section 107, the complex set of professional requirements of healthcare services “is to guarantee (a) a satisfactory quality of healthcare services”. Contrary to what the Authority seems to assert in paragraph 140, Hungary has chosen to reserve clinical psychological healthcare services to the specialised clinical psychologists, cf. the Health Act Section 108(1), cf. Sections 110(1) and (3) and 103. Persons who are not licensed and registered as specialist clinical psychologists may not provide healthcare services independently, and may only “participate” in the provision “under supervision and in keeping with the instructions” of the supervisor, who must be a licensed specialist clinical psychologist or a psychotherapist, cf. Section 110(5) and (1).

⁶¹ Attachment 22: Hungarian regulation No. 18/2016. General output descriptions and competences of academic qualifications, 56. MA Psychology Programme point b

⁶² The Authority’s letter paragraphs 134-135

⁶³ The Authority’s letter paragraph 135

The Authority further invites the Ministry to disregard the supervision requirement as a mere formality, with reference to a recent statement from Hungarian authorities.⁶⁴ The Ministry cannot share this view. It would disregard unambiguous legislation and regulations set out above, previous information given by Hungary before the change of practice in 2016, and corroborative information given by the Semmelweis University.⁶⁵ The Ministry would bring to the Authority's attention that at least one letter from Hungarian authorities, procured after the change in practice, has been provided in collaboration with ELTE University.⁶⁶ The Ministry respectfully submits that information given after the change of practice, which appears to contradict previous statements and provisions, produced with the collaboration of a part (ELTE) with presumable economic and other interests in a particular outcome, cannot be regarded as fully neutral and given decisive weight.

Moreover, the Authority suggests that an MA in Psychology with a specialisation in Clinical and Health Psychology, regardless of the abovementioned restrictions, can provide clinical psychological healthcare services independently, with reference to Amendment No. 1 to the Regulation NO. 18/2016 (VIII.5). The Ministry respectfully refutes that this regulation, which stipulates learning objectives for the MA in Psychology, has any bearing on whether a holder of MA in Psychology with said specialisation can provide clinical psychological healthcare services independently. The regulation describes academic and theoretical aims of the MA in Psychology with a specialisation in Clinical and Health Psychology, which is manifestly different from independent provision of clinical psychological healthcare services to patients. Independent provision of psychological healthcare services is reserved to specialised clinical psychologists, cf. Health Act 1997 Section 110 (3), cf. Section 103.

In addition, the Ministry would point out that neither an "okleveles pszichológus", a candidate in specialised clinical psychology or a committed candidate, can start a private practice and offer clinical psychological healthcare services independently from his/her premises. This transpires from Section 108(1) of the Health Act, which stipulates that healthcare services "shall be begun and provided only in possession of a license of operation". Such a license presupposes "registration of the specialised professional qualifications in the operations registry", cf. Section 110(3). As the Ministry spells out above, an "okleveles pszichológus" cannot be registered in the basic registry or the operations registry because he or she does not possess specialised clinical psychological qualifications. This is confirmed by the responsible body in Hungary (The State Healthcare Supply Center), obtained by a Norwegian speaking Hungarian lawyer on request from the Ministry.⁶⁷ It is also confirmed by information from Semmelweis University's website that an "okleveles pszichológus" cannot start a private practice.⁶⁸ A Norwegian "psykolog" (clinical psychologist), on the other hand, is entitled to establish private practices and offer healthcare from their own premises on an independent basis. The Ministry submits that this is yet another difference of significant importance.

⁶⁴ The Authority's letter paragraph 143-144.

⁶⁵ The Authority's letter paragraph 143-144.

⁶⁶ Attachment 23: Letter from Hungarian authorities 30 July 2018

⁶⁷ Attachment 25: Answer from the Hungarian Healthcare Service Center , 25.9.18. Translated by the Norwegian speaking lawyer Tamás Fehér from the Hungarian law firm Jalsovszky.

⁶⁸ Attachment 15: Semmelweis on the psychologist profession (translated)

The Ministry also disagrees with the Authority's claim that Norway overstates the independence of a "psykolog" (clinical psychologist).⁶⁹ A "psykolog" has the right to independently treat mental disorders, as explained in section 4. While the Ministry is aware that it is a practice in parts of the specialist health care services that either a medical specialist or psychology specialist should be involved in finalising the diagnosis of a non-specialist authorised clinical psychologist, there is no such limitation for authorised clinical psychologists in the primary healthcare services.

Moreover, while it is correct that the Norwegian Mental Healthcare Act Sections 3-8, 4-4 and 4-10, reserves certain decisions relating to coercive measures to "psykologer" (clinical psychologists) with further specialisation (psychology specialists) and psychiatrists, the Ministry contests that these limitations imply any restriction in the right of "psykologer" to independently treat mental disorders. The Ministry recalls that these decisions entail establishing compulsory mental health care, treating patients without their consent and decisions to transfer the patient. The grounds for applying stricter qualification requirements are that decisions to place a person under compulsory observation or mental healthcare are particularly invasive. The Ministry also recalls that under the Hungarian Health Act, Section 200 (2), decisions to initiate mandatory treatment cannot be taken by specialist clinical psychologists or psychotherapists, and are reserved to specialised physicians.

Finally, the Ministry would point out that there are certain clinical activities within psychotherapy that a Norwegian "psykolog" (clinical psychologist) can carry out independently, that even Hungarian specialised clinical psychologists cannot conduct independently. To do so, they must complete the extended post-graduate specialisation in Psychotherapy, with a duration of two to three years fulltime in addition to the three to four-year basic post-graduate specialisation in clinical psychology. Without certified specialised qualifications in psychotherapy, a specialised clinical psychologist can only provide psychotherapy under the supervision of a "klinikai szakpszichológus" who is specialised in psychotherapy.⁷⁰ Section 103 of the Health Act 1997 defines psychotherapy a "therapeutic process based on a variety of scientifically-founded methods, used to treat persons with psychological or psychosomatic disorders in multiple therapeutic sessions, each with a set timeframe, which may be provided for individuals or groups by a physician or a graduate psychologist having the required qualification".⁷¹ These activities are performed independently by a "psykolog" in Norway. To authorise an "okleveles pszichológus" as a "psykolog" would thus certify that the person had qualifications to perform psychotherapeutic activities independently, which the same person would not be qualified nor allowed to do in Hungary before having completed two full programs of education (basic post-graduate specialisation and extended post-graduate specialisation) of a total of six years (72 months).

To illustrate the differences between the activities of a Norwegian "psykolog" (clinical psychologist) and an "okleveles pszichológus" by means of an example, the Ministry have assessed whether an "okleveles pszichológus" can diagnose and treat children without supervision. Diagnosing and providing healthcare for children are central activities that

⁶⁹ The Authority's letter paragraphs 145-151.

⁷⁰ Attachment 30: Letter from Hungarian authorities 30. May 2017

⁷¹ Attachment 31: Hungarian Health Act of 1997, Section 103(1)

“psykologer” may carry out independently. An "okleveles pszichológus" may have the master specialisation in "developmental and clinical child psychology". This is not the same master's degree programme as the complainants have completed. There is a detailed description of this specialisation in Annex 4, Section II./56, point 8.1.5 of Regulation 18/2016. Notwithstanding their qualifications, holders of an MA diploma may not diagnose nor treat children without supervision, as the already mentioned requirements of supervision applies.

7.1.3 The educational structure is not comparable in a sense that supports the Authority's view

The Ministry also contests the Authority's assertion that the “comparable way of structuring the psychology education” in Hungary and Norway is an “element that adds to the comparability of both professions”. The Authority's assessment is led astray by several misunderstandings of facts, which the Ministry will seek to correct.

In Norway, there are BA and MA degrees in Psychology. The BA and MA in Psychology are humanist degrees. The MA in Psychology qualifies for a PhD in psychology. The MA in Psychology does not, however, qualify nor authorise the holders as “psykolog” (clinical psychologist) in Norway. To become a “psykolog”, one has to complete a six-year professional study program in psychology. This is not a humanist degree, but a healthcare degree. In order to specialise further in psychology and become a “psykologspesialist”, a “psykolog” must take an additional four years of study in specialised psychology, which is also a healthcare education.

In Hungary, there are BA and MA degrees in Psychology. The BA and MA in Psychology are similarly humanist degrees. In addition, there is a MSc degree in health psychology. As in Norway, the MA in Psychology qualifies for a PhD in Psychology. As in Norway, the MA in Psychology, and the MSc in Health Psychology, do not qualify the holders as clinical psychologists in Hungary. To become a clinical psychologist, entitled to provide clinical psychological healthcare services independently, a holder of a MA in Psychology or MSc in Health Psychology must complete a four years (three for applied health) basic post-graduation specialisation in clinical psychology. In order to provide psychotherapy, a specialised clinical psychologist must take an additional two to three years extended post-graduation specialisation in psychotherapy. The basic and extended post-graduation specialisations are healthcare educations.

The Authority's assertion that the two years humanist MA in Psychology at the University of ELTE compares to the six-years professional healthcare education in clinical psychology in Norway is logically flawed. The Ministry refers to the educational structure set out above. The Ministry also recalls that admission to the MA in Psychology at ELTE requires a BA degree in Psychology or “Psychology-related Sciences”. In general, the Ministry remarks that the majority of applications submitted to the Directorate from holders of MA in Psychology from ELTE has different BAs in psychology from Norway. These BAs would not count toward an authorisation as a “psykolog” (clinical psychologist) in Norway, as they do not include clinical courses and for the most part do not overlap with courses offered in the professional study programs. Some have BAs from abroad, including ELTE, which compares to a Norwegian BA degree in Psychology, in that they are not clinically oriented. Applicants 80103 and 81375 have

their BA from ELTE, whereas applicant 79661 have the BA from the University of Oslo. The Ministry has not been able to trace the BA degree of applicant 81656. Some applicants have BAs far removed from psychology, and yet some appears to have no BA at all. The Ministry recalls that one applicant was admitted to the MA in Psychology at ELTE on the basis of a BA degree in culture and social sciences (with individual courses in psychology) and Gestalt therapy.⁷² Another applicant was admitted without having completed a BA degree, only individual courses.⁷³ It would follow that the two-years MA does not compare with the six-years professional study programs, which is a healthcare education in clinical psychology, when admitted students to the MA program have taken few, if any, relevant clinical courses.

The Ministry finds it more appropriate to compare the Norwegian six year-professional study programs in psychology to the Hungarian four year-basic post-graduate specialisation in clinical psychology. Reference is made to an assessment made by the Department of Clinical Psychology at the University of Bergen, asked by the Ministry to compare one of the Hungarian basic post-graduation specialist educations with the University of Bergen's professional study in psychology. The assessment found a significant overlap between the Norwegian professional study programs and the Hungarian specialisation.⁷⁴ Parts of the Hungarian specialist training (clinical psychologist specialisation) thus compares with the Norwegian professional study programs.

The Ministry also contests the claim put forward by the Dean of ELTE, referred by the Authority in paragraph 157, that the basic post-graduation specialisation in clinical psychology in Hungary compares to the mounted specialisation as "psykologspesialist" in Norway. For instance, a "psykologspesialist" is qualified and authorised to decide upon mandatory treatment of a patient in a psychiatric institution, cf. Section 1-4 of the Norwegian Mental Healthcare Act. A specialist clinical psychologist is not qualified nor authorised to initiate mandatory treatment in Hungary. Further to Health Act of 1997, Chapter X, Section 200 (2), mandatory treatment can only be initiated by a specialised physician.

7.1.4 The MA in Psychology has substantial shortcomings in clinical theory and practice

At any event, the Ministry submits that the MA in Psychology with a specialisation in Clinical and Health Psychology is not specifically geared to the pursuit of the same profession as "psykolog" (clinical psychologist) because of the education's substantial shortcomings in clinical theory and practice. The content of the education in question thus confirms that an "okleves pszichológus" with a MA in Psychology with said specialisation is not trained for the same profession as a "psykolog" in Norway.

The Ministry refers to advice from an expert panel appointed by the Directorate following the change in recognition practice in 2016. The panel represents the four educational institutions

⁷² Attachment 20: Extract from application for authorisation example 1 (anonymised)

⁷³ Attachment 21: Extract from application for authorisation example 2 (anonymised)

⁷⁴ Attachment 26: Letter from Department of Clinical Psychology, Faculty of Psychology, The University of Bergen to the Ministry 31. august 2018, Attachment 27: Attachment to letter from the Department of Clinical Psychology Attachment 28: Attachment to letter from the Department of Clinical Psychology

in Norway that train “psykologer” (clinical psychologists). It has conducted expert assessments and compared the scope and content of the educations of the candidates in question with the Norwegian six-year professional study programs in psychology.⁷⁵ Reference is also made to assessments made by the Norwegian Appeal Board for Health Personnel, re. case N20175705 and case N20176909 as examples.⁷⁶

As a point of departure, the panel and the Appeal Board noted that the complainants have a five-year university education overall, with three years at bachelor's degree level and two at master's degree level. The Norwegian professional study programs, on the other hand, is a six-year integrated master's degree programme. This means that the complainants' education is partly at a lower level, in addition to being one year shorter than the Norwegian programme of professional study in clinical psychology.

The BA degrees, however, are not clinically oriented. The Ministry recalls that the majority of applicants holds Norwegian bachelor's degrees which do not contain clinical courses or clinical skills training. Similar observations hold true of bachelor degrees in psychology which the applicants have obtained abroad. Thus, the first three years required for a MA in Psychology at ELTE are not comparable to the first three years of the programme of professional study programs.

With regard to the two-years MA degree programme at ELTE, the expert panel found it difficult to see that the programme had sufficient progress and in-depth study in the field of clinical psychology. Moreover, the panel could not see that the programme includes clinical psychology and skills training in psychological testing, the mental health of children, adolescents and the elderly, and clinical neuropsychology. The practical clinical training that is included in the master's degree is of a very limited scope. This part of the programme covers some relevant topics related to self-development, but very few practical clinical courses that help to integrate clinical theory and methodology with the professional practice of psychology. The master's degree programme at ELTE thus lacks comprehensive integrated practical training under supervision and theory in an alternating arrangement to provide the necessary in-depth and broad knowledge that the Norwegian professional study programs imparts.

We wish to point out that all applications for recognition have been subjected to an individual assessment that has taken account of the possibility of variation between the applicants in terms of their bachelor's degrees and professional experience. It is particularly in the fields of clinical skills training and clinical theory that there are shortcomings in the complainants' education. The courses in clinical theory and skills training that the candidates have completed were of limited scope. The candidates lack necessary clinical theory and skills training related to testing children and adults, diagnosing children and adults, and psychological treatment of children, adults and/or families. Nor have they completed a year of supervised practical training

⁷⁵ Attachment 32: Faglige råd sak N20175976, Attachment 33: faglige råd N20176035, Attachment 34: faglige råd N20175705, Attachment 35: faglige råd N20175975, Attachment 36: faglige råd sak N20177676

⁷⁶ Attachment 37: case N20175705 and attachment 38: case N20176909.

in work directly with patients in the health and care services. In addition, the scope of their master's theses is smaller than required in the Norwegian professional study programs.

7.1.5 Consequences of recognition

The Ministry would also bring to the Authority's attention the widespread ramifications of interpreting the Directive Article 13(2) in such a way as to require Norway to authorise the applicants as "psykolog" (clinical psychologist). It would undermine the current Norwegian education system, the authorisation scheme and the profession of psychologist under the current regulations.

It would impair Norwegian authorities' ability to safeguard the important considerations for patient safety, quality and patient trust that underlie the qualifications requirements and authorisation scheme. The Ministry contests the Authority's suggestion that patient safety concerns are only relevant insofar incidents detrimental to patient safety or other problems caused by ELTE trained psychologists have already taken place and in fact been reported.⁷⁷ This suggestion is contrary to ECJ case-law on Member State's right to base public health policy decisions on the precautionary principle.⁷⁸ Norwegian authorities cannot be required to wait until a concrete patient safety breach has occurred, and in fact been reported. Rather, patient safety must be based on preventive measures and risk reduction.

The Ministry also recalls that patients are entitled to health care quality and safe treatment, cf. the Norwegian Patients' and Users' Rights Act Sections 2-1 a) and 2-1 b). One of the purposes of the title "psykolog" (clinical psychologist) is to create predictability and guarantee to patients that those who use the title hold certain qualifications. If Norway is obliged to recognise holders of MA in Psychology from ELTE, despite their substantial shortcomings in necessary and fundamental clinical knowledge and practice, Norway will no longer be able to maintain the current level of qualifications for "psykologer". To give but one example, it has been shown that applicants with the said MA in Psychology from ELTE lack the qualifications required to diagnose and treat children. An authorisation as "psykolog" would give these applicants an unrestricted right to work as clinical psychologists in mental healthcare for children and adolescents, without the necessary skills. Moreover, given Norway's population distributed over a vast geographical area, "psykologer" must often work on their own, either in municipalities or in private practices, without supervision. In consequence, the general public and other health personnel could not assume that a "psykolog" holds the qualifications required to perform the functions assigned to the role of clinical psychologists in Norway.

Finally, recognising holders of MA in Psychology from ELTE, would likely discriminate against holders of a MA in Psychology from Norway, who will often have taken the same BA in Psychology from Norway as ELTE-graduates, contrary to Recital 11 and 12 of the

⁷⁷ The Authority's letter paragraph 125, 207

⁷⁸ See for instance Commission of the European Communities v Kingdom of the Netherlands (C-41/02) paragraphs 44–45.

Directive. Recognition could also have ramifications for other groups of health personnel, such as physiotherapists, clinical nutritionists, health care workers and dental hygienists, which are all regulated professions in Norway, cf. the Health Personnel Act Section 48. Hence, the Authority's interpretation of Article 13(2) could lead to a situation where Norwegian authorities could no longer have certitude that health personnel across a wide array of professions have the necessary qualifications to treat patients.

7.1.6 Conclusion

On this basis, the Ministry submits that the applicants, holders of MA in Psychology with a specialisation in Clinical and Health Psychology from ELTE University, does not have certified training which is specifically geared to the pursuit of the given profession "psykolog" (clinical psychologist), nor presented evidence of formal qualifications that attest that they have "been prepared for the pursuit of the profession in question". Their education has been geared toward the non-regulated and non-clinical profession as "okleveles pszichológus", which is neither identical, analogous nor equivalent in terms of the activities covered by the profession as a "psykolog" in Norway. The applicants do not fulfil the conditions set out in Article 13(2) with respect to regulated education and training within the meaning of Article 3(1)e. In sum, they are not entitled to recognition under Article 13(2), as it would constitute recognition for another profession ("psykolog", clinical psychologist) in the host Member State than their education has prepared them to pursue ("okleveles pszichológus") in their home Member State.

7.2 Article 14 has not been infringed

7.2.1 Article 14 is not applicable

If the conditions for recognition under Article 13 are fulfilled, the host Member State is obliged to allow "[a]ccess to and pursuit" of the same profession. This obligation set out in Article 13, however, "does not preclude" the host Member State from requiring the applicant to fulfil compensatory measures, cf. Article 14. The wording of Article 14, read in conjunction with Article 13, indicates that the conditions in Article 13 must be fulfilled before Article 14 applies. The Ministry is of the firm view that the conditions for recognition under Article 13(2) are not fulfilled. Therefore, Article 14 does not apply. The applicants are not entitled to compensatory measures.

The Ministry points out that to hold otherwise would amount to requiring the host Member State to put in place a permanent education program to allow holders of MA in Psychology from Hungary to qualify for the different and regulated profession as "psykolog" (clinical psychologist) in Norway, which holders of MA in Psychology would not be entitled to in Hungary, and holders of MA in Psychology from Norway would not be entitled to in Norway. In Hungary, this would require a three- to four-years basic post-graduate education. Such an obligation would run counter to Recital 12 of the Preamble, which states that "individuals holding professional qualifications which have been recognised pursuant to this Directive may not use such recognition to obtain in their Member State of origin rights different from those conferred by the professional qualification obtained in that Member State".

Moreover, recognition would allow citizens to evade enforcement of national law relating to the profession as “psykolog” (clinical psychologist) in Norway, contrarily to Recital 11 *in fine* of the Preamble. It is recalled that the applicants hold BA degrees in Psychology from Norway, or BA degrees from abroad, including ELTE, which are not clinically oriented. Recognition would thus allow circumvention of a legitimate Norwegian system and the public health policy choices that the different educational tracks in psychology are based on.

An obligation to put in place a permanent education program would also be contrary to ECJ’s judgment in *Colegio de Ingenieros de Caminos*-judgment, which stated that Member States are not obliged to provide a “fresh, complete programme of education and training”.

Finally, the costs of such a program would deprive Norway of the possibility, retained by margin of appreciation, of managing and planning resources in the health and education sectors. Reference is made to the costs of the qualification programme (NOK 245 million), and the fact that corresponding issues likely will arise for other educational institutions, countries and professional groups.

7.2.2 Comments with respect to the 16 persons who applied for an authorisation

The Ministry contests that it is relevant to have regard to the previous and incorrect practice by the Directorate of Health to recognise 16 holders of MA in Psychology from Hungary under Article 13(1), and then require compensation measures in the form of supervised practice under Article 14 during a two year-license period. The Ministry recalls that this practice was based on the incorrect assumption that “okleveles pszichológus” was a regulated profession as clinical psychologist in Hungary. This practice was thus contrarily to the Directive.

Moreover, the Ministry contests that applicants who were granted a license and given an adaptation period, pursuant to the incorrect practice referred above, has a right to authorisation under the Directive after fulfilling the wrongly imposed and inadequate compensation measure of one year supervised practice. There is no basis in the Directive’s Article 13 to recognise their qualifications as “psykolog” (clinical psychologist). They were only granted a license under the flawed assumption that they were entitled to recognition under Article 13(1). The Ministry contests that Article 14 contains a conditional right to recognition further to Article 13 under these circumstances. To hold otherwise would require the host Member State to recognise qualifications in violation of Article 13.

Finally, the Ministry contests that the decision to offer a qualification programme to ELTE-graduates affected by the Directorate of Health’s change of incorrect practice violates Article 14 with respect to those applicants who were mistakenly granted a license. The Ministry reiterates that Article 14 does not apply to this program, which is an ad-hoc extraordinary and costly solution.

8 The Ministry's assessments of Directive 2006/123 and Articles 28 and 31 EEA

8.1 Directive 2006/123 does not apply

The Ministry contests that Directive 2006/123 on the freedom of establishment of service providers and the free movement of services in the EEA applies to the present case. Directive 2006/123 Article 2(2) f clearly stipulate that the Directive “shall not apply” to “healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private”.

The Ministry refutes the Authority's claim that activities performed by a Norwegian “psykolog” (clinical psychologist) are not encompassed by the term “healthcare services” in Article 2(2) f. It is undisputed that the profession “psykolog” is a regulated profession within healthcare services in Norway, cf. the Health Personnel Act Section 48(1) t. There is no basis in the wording of Article 2(2) f of Directive 2006/123 and ECJ case-law for the condition set out by the Authority that the activities in question must be restricted by law to a regulated profession. The Ministry contests that Recital 22 in the preamble gives basis for a more restricted interpretation than what would follow from the broad wording of Article 2(2) f, when such restricted interpretation would be contrary to ECJ case-law.⁷⁹

The Ministry refers to Femarbel (C-57/12), in which the ECJ specified “the constituent elements” of the concept of “health care services” under Article 2(2) f of the Directive 2006/123.⁸⁰ The Court pointed out, with respect to the wording of Article 2(2) f, that “the concept of ‘healthcare services’ adopted by the European Union legislature is rather broad”.⁸¹ The Court emphasised, also, that in order to understand “the scope of the exclusion laid down in Article 2(2)(f)”, it is “necessary to interpret the concept of ‘healthcare services’ by reference, not only to the wording of that provision, but also to its purpose and general structure, in the context of the scheme laid down by that directive”.⁸² It is clear from the Courts reasoning that reference must also be made to other EU legislation, such as Directive 2011/24 on the application of patients' rights in cross-border healthcare.⁸³

In the operative part of the judgement where the Court instructs the referring court how to interpret article 2(2) f of Directive 2006/123, the Court holds that:

the exclusion of healthcare services from the scope of that directive covers any activity intended to assess, maintain or restore the state of health of patients, where that activity is carried out by healthcare professionals recognised as such by the Member State concerned

This interpretation is consistent with the definition of healthcare services in Directive 2011/24, Article 3 f, cf. a. Further to this provision, healthcare services can also be services provided by

⁷⁹ See Sunde, T. and Sørrebø, I. *Tjenesteloven, Tjenestedirektivet i norsk rett, Kommentartutgave*, 2017, Universitetsforlaget, Oslo, p. 62.

⁸⁰ Femarbel (C-57/12) paragraph 33

⁸¹ Femarbel (C-57/12) paragraph 35

⁸² Femarbel (C-57/12) paragraph 34

⁸³ Femarbel (C-57/12) paragraph 37

"a person considered to be a health professional according to the legislation of the Member State of treatment".

On this basis, the Ministry submits that the services of a "psykolog" (clinical psychologist) are within the exclusion in Article 2(2) f of Directive 2006/123, as it has been interpreted by the ECJ with reference also to the adoption of Directive 2011/24. This has also been the consistent view of the Norwegian legislator when incorporating Directive 2006/123, see Ot.prp. nr. 70 (2008-2009) p. 58. Here, the legislator explicitly stated that "healthcare services" comprise "services provided by health personnel that fall naturally within health personnel's area of responsibility, regardless of whether or not it is only health personnel who can lawfully perform the services (our translation)."

The Ministry would also bring to the Authority's attention that the opposite conclusion would have widespread ramifications. If the exclusion in Article 2(2) f of Directive 2006/123, contrary to Femarbel, must be construed to apply only to activities explicitly reserved by law to a regulated profession, nearly all health services in Norway would suddenly fall within the scope of Directive 2006/123. This implication would be the same for other EEA-states that have not reserved a wide spectre of activities for health personnel. A wide range of activities that are normally considered as healthcare services would, contrary to the legislator's intent, be covered by the scope of Directive 2006/123.

Such a situation would be inconsistent with Directive 2005/36. The Ministry recalls that the profession of "psykolog" (clinical psychologist) is a protected title and thereby a regulated profession under Directive 2005/36. Directive 2005/36 and 2006/123 complement each other: in areas where Directive 2005/36 has no provisions, Directive 2006/123 applies. Directive 2005/36 regulates the same matters as Directive 2006/123. It is also stated in several articles of Directive 2006/123 that Directive 2005/36 is exempted, cf. Article 3(1)(d), Article 5(4), cf. (3) and Article 17(6).

In sum, the Ministry disputes that Directive 2006/123 applies to the case at hand.

8.2 Articles 28 and 31 EEA

8.2.1 There is no restriction

An authorisation scheme that applies without any direct or indirect distinction based on nationality, does not amount to a restriction under EEA law.⁸⁴ In the present case, nationality would be based on the EEA State (Hungary) in which the education was received. The authorisation scheme applies without any direct or indirect discrimination based on the EEA State in which the education was received. The Ministry therefore contests that the refusal to recognise holders of MA in Psychology from ELTE as "psykolog" (clinical psychologist) constitute a restriction of the free movement of workers and the freedom of establishment within the meaning of Articles 28 and 31 EEA.

Holders of MA in Psychology from Hungary (ELTE) can work and have freedom of establishment in Norway. They are not prohibited or discouraged from practicing their profession as "okleveles pszichológus" in Norway. The Ministry refers to the descriptions of

⁸⁴ See to that effect, Criminal Proceedings against Nilsson and others (C-162/97), paragraphs 27-28, and to the same effect, Joined Cases E-11/07 and E-1/08 Rindal and Slinning, paragraph 54.

professional opportunities available to holders of MA in Psychology in Hungary, which largely corresponds to the professional opportunities available to persons with a Norwegian and Hungarian MA in Psychology in Norway. Just as holders of a MA in Psychology from Norway, however, the applicants are precluded from using the protected title “psykolog” (clinical psychologist). The Ministry notes that in Hungary, holders of MA in Psychology would also be precluded from using the protected title specialised clinical psychologist and providing healthcare independently.

The Ministry also contests that the decision to offer an extraordinary qualification program to ELTE-graduates, and the case processing time, constitute restrictions.

The Ministry also notes that Hungarian citizens are altogether precluded from pursuing the said MA in Psychology at ELTE, by the mere fact of being Hungarian. It is puzzling that an educational program set up in such a restrictive way should give rise to claims of unlawful EEA restrictions on the part of the host Member State that correctly refuses to recognise graduates from said university to a different profession than the one their education has prepared them for.

8.2.2 Any restriction is at any rate lawful

To the extent the refusal to recognise and the decision to offer a qualification program constitutes a restriction, the Ministry submits the following:

Pursuant to Article 28(3) of the EEA Agreement, states can impose limitations on the free movement of workers on grounds of public order, public security or public health. The same applies to the freedom of establishment, cf. Article 33.

The Ministry recalls that the ECJ has consistently held that “health and life of humans rank foremost among the assets and interests protected by the TFEU and it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved. Since that level may vary from one Member State to another, Member States must be allowed a measure of discretion in that area.”⁸⁵

The same is held by the EFTA Court, which has also emphasised that such discretion in the field of public health makes the EFTA States able to take protective measures where there is uncertainty as to the extent of a risk, without having to wait until the reality of a risk becomes fully apparent. Moreover, it “must be sufficient for the authorities to demonstrate that, even though there may be some scientific uncertainty as regards the suitability and necessity of the disputed measure, it was reasonable to assume that the measure would be able to contribute to the protection of human health”.⁸⁶ This is a different and more realistic test than the one proposed by the Authority in paragraph 206 with references to case law on public policy, which is different from case law on public health.

The Ministry refutes that Norway has failed to demonstrate the necessity of a public health derogation. In the Ministry's opinion, the limitations are sufficiently justified by public health considerations and denying recognition is a proportionate measure to safeguard the

⁸⁵ Malta Dental Technologists Association/Reynard C-125/16 (paragraph 60) with further references, see also Vanderborght (C-339/15) (paragraph 71)

⁸⁶ Case E-16/10 Philip Morris, paragraphs 82-83.

requirements we have stipulated for quality in the health service. We refer here to the consequences of a right to recognition as described in 4.32 and 6.2.

The Ministry also disagrees with the narrow approach advocated by the Authority with respect to public health considerations. It is not only immediate patient safety risks that suffice as a public health justification, but also more general concerns with a longer perspective, based on the precautionary principle as set out just above and in section 7.1.5. The Ministry recalls that upon receiving new information from Hungary through the IMI-system on 26 April 2016, the Directorate placed pending applications on hold, to make sure that it would process the applications based on a correct and comprehensible understanding of the Hungarian system, in continued dialogue with Hungarian authorities.

Moreover, the Ministry refutes the Authority's claim that the reason for the change in practice was something other than to make a decision in accordance with the current legislation. No unreasonable or extraneous considerations underlie the change in practice. The Directorate's change of practice was motivated by information that showed that previous recognitions were based on incorrect assessments, which took the MA in Psychology from ELTE to qualify for a profession as clinical psychologist which proved to be manifestly flawed. The change of practice was not motivated by a concern about the number of applicants from ELTE.

In paragraph 213, the Authority claims that the Norwegian recognition authorities demand that applicants from ELTE "should start their education in Norway from scratch". That is not the case. Applicants educated at ELTE can become clinical psychologist by pursuing the basic post-graduate specialisation education in specialised clinical psychology in Hungary. Further education to compensate for the shortcomings may also be a possibility, such as the one-time solution qualification programme offered is intended to provide adequate further education for the affected complainants.

Finally, the Ministry refutes that Norway's approach has been inconsistent, and therefore cannot be appropriate in achieving the public health objective. The seven applications that were approved after the change of practice, referred to by the Authority, were granted due to a failure in the Directorate's internal communication in connection with the change in practice and follow-up of this far-reaching matter. The qualification program, referred to by the Authority, is an extraordinary one-off solution for the affected candidates, without any bearing to the Ministry's interpretation of Directive 2005/36. The fact that the Norwegian authorities have offered an extraordinary opportunity to a specific group of students that are particularly affected, cannot call into question the consistency and appropriateness of the general approach. Indeed, it cannot imply that such an extraordinary offer, that cannot be provided within the current framework for the Norwegian education system and health sector, must be provided to any other student from the same school or University.

9 Case processing times

9.1 Time to decide applications

The Ministry recalls that Article 51(2) of Directive 2005/36 requires competent authorities to reach a decision within four months of the applicant's complete file being submitted. The Ministry has acknowledged that the case processing time before the Directorate of Health

exceeded the deadline in Article 51(2) of Directive 2005/36 for some applications. In the case no. 80103, the application was refused 4 months after all the relevant documents were handed in, and 7 months after the application was sent in. In the case no. 81375, the application was refused 3,5 months after all the relevant documents were handed in, and 7 months after the application was sent in. In the case no. 79661, the application was refused 6 months after all the relevant documents were handed in, and 6,5 months after the application was sent in. The applicants were notified, however, of the extended case processing time during this period. In the case no 81656 it has not been possible to identify the applicant.

In general, the Ministry notes that applicants who completed their master's degrees in 2016, were mostly processed by the Directorate within the four-month deadline. With respect to applicants who completed their master's degrees at ELTE in spring 2017, the Directorate received most of these applications in the autumn 2017. Due to the hold of pending applications in order to gather correct and comprehensible information from Hungarian authorities, these applications were not finally processed until June/July 2018.

Out of consideration for those affected, the Ministry finds it regrettable that it has taken more than four months to process several of the cases.

9.2 Time to decide appeals

The Ministry contests that the case processing time for appeals infringed Article 51(2) of the Directive. As acknowledged by the Authority, the said article only imposes a deadline for deciding upon recognition applications and not for the processing of appeals. In the Ministry's opinion, Article 51(2) clearly does not apply.

To the extent the provision, notwithstanding its clear wording and purpose, applies to appeal case processing times, the Ministry submits that the time taken to decide upon appeals was justified. Reference is made to the difficulties in obtaining correct, comprehensible and timely information from Hungarian authorities. In particular, the work of obtaining necessary clarifications from the Hungarian authorities for use in the processing has been time-consuming. It has been difficult to find out which professional and educational regulations apply in Hungary and to establish what the content of the Hungarian master's degree programme in psychology comprises. The Ministry emphasises that this has been a complex matter in which it has been important to obtain further information to elucidate the matter sufficiently and thereby ensure that the applicants' appeals were given fair and correct consideration.

In cases no. 80103, 79661 and 81375, the Directorate reassessed the complaints within 8 months and transferred them to the Norwegian Appeal Board for Health Personnel. The complainants forwarded new information several times in this period which the Directorate had to assess.

In case 80103, the Norwegian Appeal Board for Health Personnel processed the complaint within 5 months. In case no. 70661 and 81375, it took 8 months before the Norwegian Appeal Board for Health Personnel processed the refusals.⁸⁷ The complainants received information

⁸⁷ Attachment 39: Refusals from the Appeal Board for Health Personnel to the complainants part 1, Attachment 40: Refusals from the Appeal Board for Health Personnel to the complainants part 2

concerning the expected time to decide appeals.⁸⁸ The complaints appeals were processed within this time.

9.3 Right to appeal exceeded deadlines for processing applications

With respect to the Authority's claim that Norway infringed Article 51(3) by not having established a system for appealing failures to take timely decisions, the Ministry informs that as of 15 August 2018, Section 21a of the Norwegian Regulations concerning authorisation, licensing, and specialist approval for health personnel with professional qualifications from other EEA countries or Switzerland, has been adopted. The provision makes it possible to appeal failures to decide applications within the time limits in Article 51 (2) of the Directive.

10 Conclusion

In conclusion, the Ministry submits that Article 13 and 14 of the Directive has not been infringed, Directive 2006/123 does not apply, and the handling of the applications does not constitute unlawful restrictions under Articles 28 and 31 EEA. With regard to the extraordinary qualification program put in place by Norwegian authorities to accommodate ELTE graduates affected by the previous incorrect practice of the Directorate of Health, the Ministry invites the Authority to close the present case.

Yours sincerely

Kari Sønderland
Director General

This document is signed electronically and has therefore no handwritten signature

⁸⁸ Attachment 41: Letters from the Appeal Board for Health Personnel to the complainants