

EFTA Surveillance Authority
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BELGIUM

Your ref

Our ref
20/2162-

Date
29 September 2020

Reply to Reasoned Opinion related to case no. 80103, 79661, 81375 and 81656 dated 29th of April 2020 - Directive 2005/36

1 introduction

- (1) Reference is made to the Reasoned Opinion ("RO") by ESA on 29 April 2020. In that RO, ESA concluded that by
- refusing to recognise the Hungarian qualification of Master's degree in Clinical and Health Psychology ("okleveles pszichológus", specialisation "Clinical and Health Psychology"), in order to work as a psychologist ("psykolog") in Norway, Norway has failed to fulfil its obligations arising from Articles 13 and 14 of the Act referred to at point 1 of Annex VII to the EEA Agreement (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications), as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that Norway has thereby failed to fulfil its obligations arising from the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.
 - exceeding on a regular basis the four-month deadline when processing recognition applications, Norway has failed to fulfil its obligation arising from Article 51(2) of the Act referred to at point 1 of Annex VII to the EEA Agreement (Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications),

as adapted to the EEA Agreement by Protocol 1 thereto. In the alternative, the Authority concludes that, due to the excessive delays in processing recognition applications, Norway has failed to fulfil its obligations arising from Article 13 of the Act referred to at point 1 of Annex X to the EEA Agreement (Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market), as adapted to the EEA Agreement by Protocol 1 thereto and/or from Article 28 and 31 EEA.

- (2) The Ministry of Health and Care Services (hereinafter “the Ministry”) disputes the conclusion by ESA and maintains that there has been no violation of either Directive 2005/36/EC, Directive 2006/123/EC or Article 28 and 31 of the EEA Agreement.
- (3) In the view of the Ministry, the RO by ESA is based on several errors, both in law and in fact. The Ministry respectfully argues that many of the factual errors could have been avoided, had ESA only asked for further clarifications or documentation, in particular about the role of the *psykolog* in Norway. The Ministry points out that this case has been subject to lengthy proceedings before Oslo District Court, where both the facts of the case and the relevant EEA law was meticulously dealt with through updated written documentations and oral testimonies, from both the ELTE-university, universities in Norway, the Health Directorate, and an attorney-at-law from Hungary. Both the proceedings and the subsequent judgement of 11. November 2019 from the Oslo District Court confirmed the view of the Ministry about the facts and law of this case. In the opinion of the Ministry, it would have been appropriate for ESA to request updated information after this judgement.
- (4) The Ministry respectfully points out that the errors in the RO particularly relates to the following:
 - ESA describes the role of a *psykolog* in Norway incorrectly. ESA erroneously assumes that a *psykolog* needs assistance from a *psykologspesialist* when carrying out his/her work, and that a *psykolog* is never performing his/her work entirely independently.
 - ESA describes the regulation of an *okleveles pszichológus* and *klinikai szakpszichológus* in Hungary incorrectly. ESA disregards the Hungarian regulation and the Hungarian National Report describing the Hungarian regulation of psychology.
 - ESA puts forward several submissions about the law, which in the opinion of the Ministry is based on a rather weak legal analysis. This is shown in case of E-4/04, where the submissions by ESA are at odds with the submissions by the Commission and other states not involved in the dispute at hand.
- (5) The view of the Ministry will be explained in the following. This letter is structured the following way:
 - Factual background – **Section 2**
 - The regulation of a *psykolog* in Norway – **Section 3**

- The regulation of *okleveles pszichológus* and *klinikai szakpszichológus* in Hungary – **Section 4**
- Other factual errors in the Reasoned Opinion – **Section 5**
- Legal submissions – **Section 6**

2 Factual background

(6) The Ministry mostly agrees with ESA's account of the factual background of the case in section 4 of the RO. However, some clarifications and corrections are needed:

- The key information in Hungary's reply to Norway on 26 April 2016 was not only that *okleveles pszichológus* was not a regulated profession in Hungary.¹ The key information of that reply was also that a person with the title *okleveles pszichológus* could not work as a clinical psychologist.
- The incorrect 2014-assessment was not carried out by an expert panel as presumed in the RO.² The 2014-assessment was carried out according to an old assessment scheme where only a single employee from one of the universities on an ad hoc basis was given the assignment to assess the professional qualification in question. There was no quality check of this. The establishments of the expert panels came into use later, to improve the quality of the assessments.
- ESA's description of the content of the special qualification program offered to the ELTE-graduates is mostly correct.³ It should, however, be emphasised that the supervised practice in this program is not the same as the practise usually assigned as compensatory measures pursuant to Article 14.
- ESA states that students at ELTE "*relied on the expectation that they would be granted a license to work as a psychologist under supervision on their return to Norway*".⁴ The Ministry finds this language ambiguous. Thus, it should be pointed out, that it has been clearly communicated by the authorities and student organisations, that previous recognitions do not guarantee approval for new applications. In fact, documentation from a meeting between the Norwegian Psychological Association and ELTE-students in February 2016 showed that there was a significant uncertainty among the ELTE-students whether they would be granted license in Norway or not.

¹ RO para 82.

² RO para 70-71. As described in the Ministry's letter 26 September 2018 p. 6, the expert panel was not appointed until 2017.

³ RO 84 til 85.

⁴ RO para 73.

- Annex 1: Printout from the Norwegian Directorate of Health's website, 1 November 2018
- Annex 2: Printout from the websites of Association of Norwegian Students Abroad (ANSA), 3 September 2018.
- Annex 3: Printout from the websites the Norwegian Psychological Association on January 2016, 28 September 2020
- Annex 4: E-mail from the Norwegian Psychological Association to a student representative, 11 March 2016

- (7) The Ministry respectfully points out, that at some points in the RO, ESA's language might leave an impression that ESA doubts the Ministry's descriptions of the facts, without this being stated explicitly by ESA or an alternative explanation being given.⁵ The Ministry therefore kindly ask if ESA could request clarification if some of the information given by the Ministry is unclear.

3 The regulation of a *psykolog* in norway

3.1 Introduction

- (8) The Norwegian legislation uses the term *psykolog* for clinical psychologists.⁶ As the Ministry previously has explained, the core activities for a *psykolog* is examining, diagnosing, and treating patients.⁷ *Psykologer* have an independent and direct responsibility for patients and may start their own practise. This has been thoroughly explained in the Ministry's letter 26 September 2018 section 4.3.2 and the judgement of the Oslo District Court has concluded similarly. The request for an advisory opinion from the Borgarting Court of Appeal is based on a similar understanding of the autonomy and activities of a *psykolog*, after input from the parties.⁸
- (9) The RO is, in the opinion of the Ministry, based on several incorrect and unsubstantiated claims about the role and autonomy of *psykologer* in Norway. ESA submits in particular that Norway has overestimated the independence of a *psykolog*.⁹ The Authority assumes that a *psykolog* requires the assistance of a *psykologspesialist* on many occasions, and that a *psykolog* is never performing his/her tasks entirely independently.¹⁰ The Ministry respectfully disputes this. In the following paragraphs, the Ministry will comment on some of ESAs factual misunderstandings:

⁵ RO para 79 and 80.

⁶ In the RO para 30, ESA claims that the profession clinical psychologist does not exist in Norway. This in incorrect, cf. the Ministry's letter 26 September 2018 section 2 (i).

⁷ In the RO para 26, ESA equates *psykologers* clinical and non-clinical work tasks. This does not leave a correct impression. Although *psykologer* are not required to work clinically, their core tasks are examining, diagnosing, and treating patients. Unfortunately, on this point the description in the EU Database of regulated professions referred to in the RO para 28 is imprecise. The Ministry points out that that database has no legal authority.

⁸ Request for an Advisory Opinion in case E-4/20, 11 May 2020, section 5.2.

⁹ RO para 144-162.

¹⁰ RO para 145 and 155.

- *Psykkologers* professional practice varies between the primary and specialist health services – **section 3.2**
- *Psykkologer* have an independent and direct responsibility for patients without the involvement of a specialist – **section 3.3**
 - o The ethical guidelines of the Norwegian Psychological Association do not reflect any lack of autonomy for *psykkologer* – **section 3.3.2**
 - o It is not the view of the Norwegian Board of Health Supervision that only *psykkologspesialister* can diagnose patients. In fact, statements from audits in the primary and private health services confirms that *psykkologer* have an independent and direct patient responsibility – **section 3.3.3**
 - o The new national guidelines for the health and social sciences educations do not indicate that *psykkologer* previously have not worked independently – **section 3.3.4**
 - o It is not the referring party that receives reimbursements from the state when a patient is referred to the specialist health services. It is the service provider – **section 3.3.5**

3.2 The distinction between primary and specialist health services

- (10) Contrary to what ESA seems to assume in the RO,¹¹ in Norway a distinction is drawn between the primary and specialist health services and this distinction is relevant when assessing the role and autonomy of *psykkologer*.
- (11) The municipalities are responsible for providing necessary health- and care services to residents of the municipality. This is often referred to as either the primary health service or the municipal health service (*primærhelsetjenesten* or *kommunehelsetjenesten*) and includes all public health services that are not offered at state level. The primary health service is regulated in the Act on Municipal Health and Care Services. Section 3-2 (2) of this Act imposes on municipalities an obligation to have *psykkologer* in their staff.¹²
- (12) Most health issues are dealt with within the primary health service. The primary health service also serves as the link between the public and the specialist health services (*spesialisthelsetjenesten*). The public specialist health services only serve patients with referrals from the primary health service or patients in need of immediate help.
- (13) The specialist health services are responsible for hospitals, institutions, and the ambulance service. It covers resource-intensive services that require specialist

¹¹ RO para 47.

¹² The Act on Municipal Health and Care Services (Lov om kommunale helse- og omsorgstjenester) §§ 3-1 and

3-2. Norwegian version: <https://lovdata.no/dokument/NL/lov/2011-06-24-30>