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Judgment of the Court of Justice in Case C-313/01

*Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*

**THE ITALIAN AUTHORITIES CANNOT REFUSE ENROLMENT IN THE REGISTER OF "PRATICANTI" TO THE HOLDER OF A "MAITRISE EN DROIT" ISSUED IN ANOTHER MEMBER STATE**

*The host Member State must compare the diplomas, taking account of the differences between the national legal systems and, in appropriate cases, require the person concerned to show that he or she has acquired the learning and skills that are lacking.*

Christine Morgenbesser, a French national living in Italy, holds a "maîtrise en droit" awarded in France in 1996 but has not obtained the certificate of aptitude for the profession of *avocat* (lawyer) (CAPA). After a short training period in a French law firm, she has been working in a legal office in Genoa since 1998. She has applied for enrolment in the "registro dei praticanti", which is necessary for validly carrying out the period of practice in Italy with a view to taking the aptitude test for pursuing the profession.

Her application was refused by the Bar Council of Genoa and by the Consiglio Nazionale Forense (National Bar Council) on the grounds that the Italian statute governing the profession of *avvocato* (lawyer)<sup>1</sup> requires the person concerned to hold a legal diploma awarded or confirmed by an Italian university and that she was not qualified to pursue the profession of *avocat* in France.

The Corte di cassazione has therefore asked the Court of Justice whether Community law allows the Italian authorities to refuse to enrol the holder of a legal diploma obtained in another Member State solely on the ground that the diploma was not awarded in Italy.

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<sup>1</sup> Royal Decree-Law No 1578 of 1933.

The Court has held that neither Directive 98/5 on the pursuit of the profession of lawyer on a permanent basis, nor Directive 89/48 on the recognition of higher-education diplomas corresponding to education and training periods of at least three years' duration in relation to regulated professions apply to Ms Morgenbesser's situation, since the first of those directives concerns only fully-qualified lawyers and the activity of *praticante* (or *patrocinante*) – being limited in time and constituting the practical part of the training necessary for access to the profession of lawyer – cannot be described as a "regulated profession" for the purposes of Directive 89/48, capable of being distinguished from the profession of lawyer.

Since the period of practice entails – with a view to access to a regulated profession – the pursuit of **activities which are remunerated** (by the clients in the form of fees or by the law firm in the form of salary), **the principles laid down in the treaty on freedom of establishment or freedom of movement for workers apply.**

The Court therefore draws attention to the principles established by its own case-law: **if the national rules do not take account of learning, skills and qualifications already acquired by a national of another Member State outside the host State, the exercise of the freedoms of establishment and movement is thereby hindered.**

The diploma of the person concerned must be examined in the context of an **overall assessment of academic and professional training.** The Italian authority therefore has to examine whether and to what extent the learning and skills certified by the diploma, the qualifications or the professional experience obtained in another Member State, **together with the experience acquired in Italy** may satisfy – even in part – the conditions necessary for access to the activity of *praticante*.

In the case of the profession of lawyer, a Member State must make a comparative examination of the diplomas, taking account of the differences between the national legal systems concerned. If such an examination reveals that the systems correspond only in part, the host State may require the person concerned to demonstrate that he or she has acquired the learning and skills that are lacking. **The competent authorities of the host State must therefore measure whether the learning, skills and experience acquired in that State sufficiently demonstrate that the missing knowledge and qualifications have since been acquired.**

*Unofficial document, for media use only, which does not bind the Court of Justice.*

*Available languages: DA, DE, EN, FR, IT.*

*The full text of the judgment can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).*

*In principle it will be available from midday CET on the day of delivery.*

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