

CCBE position on the Morgenbesser case law

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers.

Introductory remarks

The EU Directives specifically applicable to lawyers, i.e. Directive 77/249 on provision of Services and Directive 98/5 on establishment (the Lawyers' Directives) are currently under evaluation by the European Commission.

The 2012 report, produced by Maastricht University and Panteia, on "Evaluation of the Legal Framework for the Free Movement of Lawyers" for the European Commission, pointed out that mobility of the younger trainees could "significantly impact lawyer mobility" (p.72 §2.7.2) and might boost employment in jurisdictions where there were law firm employers found there was a 'shortage of talent' (p.73). The Report contrasted the mobility granted to University students and fully qualified professionals with the lack of strong mobility rights for trainee lawyers, though it made no recommendations based on these observations, and recognised:

"that the profession of lawyer is different from most other professions, in the sense that the content of the knowledge of the lawyer is very much limited to the legal system in which the lawyer concerned was trained". (p.235)

The report specifically refers to the decision of the European Court of Justice in case C-313/01 *Christine Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova*, when analysing the mobility of trainee lawyers. The judgment, in essence, extends the right of mobility to those still in training and not yet fully-qualified lawyers. Competent authorities have a duty to take into account all the qualifications of such EU nationals seeking entry into their professions.

CCBE views

Shortly after the European Court of Justice's judgement in *Morgenbesser*, the CCBE adopted its analysis and guidance to Bars and Law Societies to assist Bars and Law Societies in their implementation of the *Morgenbesser* ruling. In the interests of transparency and making it easier for *Morgenbesser* applicants to understand, the CCBE has started to publish its members positions and procedures outlining their *Morgenbesser* processes on its website.

The CCBE recognises that Bars and Law Societies must ensure that they comply with their EU obligation and seeks to ensure that Bars and Law Societies consider, and properly assess,

applications from semi-qualified candidates who wish to start or continue their legal training outside their home jurisdictions. The CCBE notes that such qualifications should be assessed “having regard to the nature and duration of the studies and practical training” (Morgenbesser §§67-68). Competent authorities are entitled to take account of objective differences in the context of training. In the case of lawyers the different legal frameworks of the profession and the different fields of activity of the profession in the Member States of origin can be taken into account including the differences between the national legal systems (Morgenbesser §69).

The CCBE notes that one of the recent amendments to Directive 2005/36/EC on the recognition of Professional Qualifications, by Directive 2013/55/EU, introduced the notion that a ‘professional traineeship’ required for access to a regulated profession carried out in one Member State, access to which could have been facilitated by the Morgenbesser case law, must be recognised by a relevant Competent Authority in another Member State. Under the Directive the Competent Authority can limit such recognition, inter alia, through setting out limits on the permissible recognised duration of such a traineeship and by issuing detailed Guidelines: ‘on the organisation and recognition of professional traineeships carried out in another Member State or in a third country, in particular on the role of the supervisor of the professional traineeship.’ (Article 55A (2) of Directive 2013/55/EU)

In the absence of a full transposition of the Morgenbesser regime in the Professional Qualifications Directive, the responsibility to provide clarity and transparency rests with competent authorities in the Member States. With regard to non-fully qualified lawyers, the CCBE will continue to assist Bars and Law Societies in their efforts to improve legal certainty for applicants.