

'IMPROVING LEGAL EDUCATION AND TRAINING IN A CONVERGING EUROPE'

**Coping with non nationally trained applicants
Warsaw, 25. – 27. 9. 2007**

Mgr. Lenka Eisenbruková (Czech Bar Association)

After the accession of the Czech Republic to the European Union, the Czech Republic had to implement relevant directives dealing with free movement of lawyers in the Czech legal order, i.e. these directives were implemented by the Act No. 85/1996 Coll., on the Legal Profession, as amended.

The Act on the Legal Profession stipulates, inter alia, the requirements for practising the Legal Profession, the status of the established European lawyer as well as visiting European lawyer and the status of “the so called” foreign lawyer (lawyers especially from third countries).

Legal services in the territory of the Czech Republic may be provided by lawyers (Czech lawyers and “the so called” foreign lawyers), and natural persons who are citizens of any of the EU Member States, or State Parties to the European Economic Area Agreement, or citizens of other states if so stipulated by an officially promulgated international treaty whose ratification has been approved by Parliament thus becoming binding on the Czech Republic and have obtained in their home country entitlement to provide legal services under their home country professional title (European lawyers).

Before I start to talk directly about possible ways to recognize the professional qualification of lawyers and trainee lawyers in the Czech Republic, it is my duty to inform you about the requirements to be fulfilled by Czech lawyers in order to practise the Legal Profession in the Czech Republic.

Requirements for Practising the Legal Profession in the Czech Republic by Czech lawyers

A lawyer is person who has been admitted to the Bar having his name recorded in the Register of Lawyers maintained by the Czech Bar Association.

The Bar records by entering his name in the Register of Lawyers, upon a written application, any person who

- is fully legally competent,
- has obtained a university degree within a Master's programme in law studied at a university in the Czech Republic, or has obtained a law degree at a foreign university, if so provided by an international treaty binding on the Czech Republic, or whose education has been recognized under special legislation,
- has participated in professional training as a trainee lawyer for a minimum of three years,
- has no record of criminal convictions,
- has not had imposed on him the disciplinary punishment of termination of his membership in the Bar, or who is deemed not to have had imposed on him such punishment,
- is not in any other employment, work or service relationship, with the exception of employment for the Bar, for a lawyer or a legal entity established to practise the legal profession, as a university teacher, or as a researcher in law
- has passed the Bar examination, and who
- after fulfilling all the requirements has made to the President of the Bar the promise as follows: "I promise to my best faith and integrity that I will respect the law and ethics of the legal profession and protect human rights. I promise to observe the duty of professional secrecy and respect the dignity of the legal profession."

Now, I would like to move forward and differentiate between foreign and European lawyers and their procedures of the recognition of qualification.

Foreign Lawyer (lawyers especially coming from third countries)

The Bar admits to the Bar and record in the Register of Lawyers, upon a written application and making of the promise, every person who has fulfilled the requirements for practicing the Legal Profession, and who

- a) proves that he is entitled to provide legal services in a foreign country
- b) has passed the examination to recognize qualification

The examination to recognize qualification examines the knowledge of legislation on the provision of legal services and a basic knowledge of the law of the Czech Republic; it also checks on the knowledge of the professional rules. This examination may be taken in a foreign language regularly used within international relations (English, German and French).

A foreign lawyer is entitled to provide legal services in the area of law of the country in which he obtained his entitlement to provide legal services, and in the area of international law.

Established European Lawyer

An established European lawyer is entitled to provide legal services on a permanent basis in the Czech Republic.

The Bar registers a European lawyer in the Register of European Lawyers within one month of its receipt of a written application which must be appended with

- a) a document proving that the European lawyer is a citizen of a home country,
- b) a certificate of entitlement that he has been providing legal services in his home country not dating more than three months,
- c) a certificate of insurance against liability for damage for which he is responsible to his clients.

The Bar issues to a European lawyer a *Certificate of Entry in the Register of European Lawyers* upon his payment of a fee set by professional rules of an amount of up to 4,000 CZK. The Bar makes the entry in the Register of European Lawyers without delay but not later than within one week, and informs, at the same time and to the extent necessary, the competent home country body.

Visiting European Lawyer

A visiting European lawyer is a European lawyer who provides legal services on a temporary or occasional basis within the territory of the Czech Republic.

A visiting European lawyer is, in the provision of legal services, obliged to use his professional title of his home country along with the name of the competent authority in his home country; such title must be expressed in the official language, or in one of the official languages, of his home country.

Where a visiting European lawyer provides his legal services in the Czech Republic for more than one month without any significant interruption he is obliged to notify the Bar of his mailing address in the Czech Republic in order for documents to be sent to him by the Bar, including decisions adopted by the bodies of the Bar in proceedings stipulated by the Act on the Legal Profession.

European established lawyer willing to be registered in the Register of Czech lawyers

The Czech Act on the Legal Profession regulates **two possible ways** for European lawyers to become Czech lawyers:

1) The Bar admits to the Bar and records in the Register of Czech Lawyers, upon a written application and making of the promise, a European lawyer who has fulfilled requirements for practicing the Legal Profession, and who has proved

a) that he has provided legal services in the Czech Republic as an established European lawyer for at least three years without any significant interruption, and that

b) he has provided legal services under a) in the area of law of the Czech Republic.

If a person applying for the admission to the Bar has not provided legal services for at least three years, but in an interview before a three-member panel appointed by the President of the Bar, proves that his knowledge of the law of the Czech Republic and of professional rules, and his experience acquired during his provision of legal services, are sufficient to practise the legal profession, the Bar may waive that requirement partly or fully.

There are no other requirements to be fulfilled by these European lawyers to become Czech lawyers.

2) The Bar admits to the Bar and records in the Register of Czech Lawyers, upon a written application and making of the promise, a citizen of a home country who has fulfilled requirements for practicing the Legal Profession, and who

a) proves that he has fulfilled requirements for professional education and practice set in his home country in order to be entitled to provide legal services under the professional title, and who

b) passes the competency examination

The competency examination examines the knowledge of the constitutional legislation of the Czech Republic, public and private law, including his ability to interpret and apply the law to a particular situation, and his knowledge of professional rules considering the fact that the applicant has already passed the Bar examination in his home country and satisfied requirements for the award of entitlement to provide legal services in that Country under this home country professional title. The competency examination may be taken only in the Czech language or the Slovak language.

There are no other requirements to be fulfilled by these European lawyers to become Czech lawyers.

Recognition of the legal practice of a European trainee lawyer

The Bar may recognize the legal practice of a trainee lawyer from any EU member state obtained after prescribed legal education at a university in case a trainee lawyer has, during its duration, acquired knowledge and skills necessary in order to practice the Legal Profession. This legal practice itself shall be evaluated case by case (as the legal practice and its content is a bit different in each member state) and can be recognized partly or fully. This regime is the same for Czech trained applicants as well as non-nationally EU trained applicants.

Conclusions

I would like to conclude my contribution with the statistics of non-nationally trained lawyers registered in the Register of lawyers (Czech lawyers and “the so called” foreign lawyers) and the Register of European lawyers.

The Czech Bar Association has entered 50 lawyers in the Register of European lawyers and 156 “the so called” foreign lawyers in the Register of lawyers up to now. There are no European lawyers willing to practice the Legal Profession as Czech lawyers and, therefore, to be registered in the Register of Czech lawyers.