



Access to a legal traineeship in a Member State may be made conditional on a broad and in-depth knowledge of national law

Although Community law requires that the qualifications and the experience of a candidate who obtained his diploma in law in another Member State be fully taken into account, it does not require that the level of knowledge of national law required be lowered for such a candidate

In Germany, in order to carry out any of the regulated legal professions it is necessary to pass the first State examination following legal studies as well as the second State examination in law on completion of a legal traineeship. That traineeship lasts for a period of two years and consists, in particular, of compulsory periods of training which take place at a general civil law court, at the Public Prosecutor's Office or at a criminal court, with the public authorities, and with a lawyer.

Under German law, if a national of another Member State has acquired, in that State, a university diploma in law giving access there to post-university education, he may request that his knowledge and skills be declared equivalent to those attested by the passing of the first State examination in the compulsory subjects.¹ Those compulsory subjects concern, in particular, the fundamental aspects of German civil law, criminal law, public law and procedural law.

Equivalence is assessed on the basis of the foreign university diploma and of any other relevant diploma or documentary evidence submitted. If the declaration of equivalence is granted, the person concerned may serve a legal traineeship. If the comparative assessment shows that there is no equivalence or that there is only partial equivalence, the interested party may apply to take an aptitude test.

The Ministry of Justice of the Land Mecklenburg-Western Pomerania refused to admit Mr Peśla, a Polish national, to serve as a legal trainee without first taking that aptitude test. Before applying for admission to the legal traineeship, Mr Peśla had obtained a Master's degree from the Faculty of Law of the University of Poznań (Poland) and had been awarded the title of 'Master of German and Polish Law' and 'Bachelor of German and Polish Law' as part of German-Polish legal studies at the University of Frankfurt-an-der-Oder (Germany). According to the Ministry of Justice, knowledge of foreign law, such as Polish law, could not be recognised as equivalent given the differences between it and German law and the title of 'Master of German and Polish Law' did not attest for the level of knowledge of German law required. Mr Peśla then brought an action before the Schwerin Administrative Court (Germany). That court essentially requested the Court of Justice to specify the legal criteria imposed by Community law in relation to the assessment of equivalence of legal knowledge which needs to be carried out following an application for direct admission to a legal traineeship, without taking the tests provided for to that end.

In today's judgment the Court states that a person in Mr Peśla's situation does not fall within the scope of the provisions of the directives relating to the freedom of movement for lawyers. It notes that, in the absence of harmonisation at European Union level of the conditions of access to legal traineeships, the Member States are entitled to lay down the knowledge and qualifications required. However, in order to reconcile the national requirements so defined with the requirement

¹ That possibility arose in Germany following the Court's earlier judgment in Case [C-313/01 Morgenbesser](#) (see [Press Release 99/03](#)).

that the fundamental freedoms guaranteed by Community law be capable of being exercised effectively² European Union law requires the authorities of a Member State, when assessing the application for admission of a national of another Member State, to carry out the examination of equivalence in the light of the academic and professional training and experience as a whole before requiring a candidate to take an aptitude test.

The Court states that the knowledge to be taken as a reference point for the purposes of assessing whether a candidate can be admitted directly to a legal traineeship, that is to say without having to take such a test, is that attested by the qualification required in the Member State concerned. Therefore, contrary to Mr Pešlá's claims, that Member State could not be required to restrict the assessment of the equivalence of the qualifications to a comparison of the intellectual level of the training and the time and effort invested to that end.

Moreover, Community law does not require that, in the context of the assessment of equivalence, the level of knowledge of national law be lowered in relation to the level attested by the qualification required in the Member State concerned, such as the first State examination in Germany. However, although Community law does not, of itself, require a lowering of the level of knowledge of the law of the host Member State required in situations such as that which arises in the main proceedings, the Member States are also not deprived of the possibility of relaxing the relevant qualification requirements. In addition, it is important, in practice, that the possibility of partial recognition of knowledge should be more than merely notional. At first sight that does not appear to be the case in Germany but it is the task of the national court, which alone is competent to rule on the interpretation of German national law, to determine whether that is the case.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Union law or the validity of a Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² In this case, the freedom of movement for workers and freedom of establishment.