



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 59/14

Luxembourg, 10 April 2014

Advocate General's Opinion in Joined Cases C-58/13 and C-59/13
Angelo Alberto Torresi and Pierfrancesco Torresi v Consiglio dell'Ordine
degli Avvocati di Macerata

According to Advocate General Nils Wahl, the mere fact that a citizen chooses to acquire the title of lawyer in another Member State for the purpose of benefitting from more favourable legislation is not an abuse of rights

A practice of refusing nationals, who obtained the title in another Member State, to be entered in the special section of the Bar Register for lawyers qualified abroad, undermines the correct functioning of the Directive and compromises its objectives

Italian nationals Angelo Alberto Torresi and Pierfrancesco Torresi each obtained a university degree in law in Italy. Thereafter, they obtained in Spain its recognition as equivalent to the Spanish degree in law in Italy (*Licenciado en Derecho*). This then allowed them to be enrolled as 'abogado ejerciente' by the Bar of Santa Cruz in Tenerife. A few months later they then requested the Bar Council of Macerata, Italy, that they be enrolled in the special section of the Bar Register for lawyers qualified abroad. Their applications were based on the Italian law¹ implementing the Lawyers' Establishment Directive² which allows lawyers to practise under their home-country title in other Member States.

Since the Bar Council did not take a decision within the prescribed period, Messrs Torresi lodged appeals before the Consiglio Nazionale Forense (CNF) (National Bar Council) which has asked the Court of Justice whether the directive prevents Member States, from refusing, on grounds of abuse of rights, to enter in the Bar Register, in the special section for lawyers qualified abroad, nationals of that Member State who, soon after obtaining their professional title in another Member State, return to their home Member State.

In his Opinion delivered today, Advocate General Nils Wahl first explains why the Court of Justice is competent to hear this case referred from the CNF. Even though the CNF is composed of lawyers and decides on the applications of lawyers to be entered in the Bar Register, it nevertheless can be considered to be sufficiently independent and impartial as certain procedural safeguards exist. Accordingly the CNF fulfils the same criteria as national courts and tribunals and thus can refer questions for a preliminary ruling on matters of EU law to the Court of Justice.

Concerning the substance of the case, Advocate General Wahl observes that, according to settled case-law, EU law cannot be relied on for abusive or fraudulent ends. A finding of abuse requires, a combination of **objective circumstances** (despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved) and a **subjective element** (the intention to obtain an advantage from the EU rules by artificially creating the conditions laid down for obtaining it)³. It is for the national court to establish the existence of those two elements in

¹ Legislative Decree No 96 of 2 February 2001. In order to practice the profession of lawyer in Italy under a title obtained in the country of origin, nationals of the Member States must, in the district where they have their permanent residence or professional establishment, apply for entry in the special section of the Bar Register for lawyers who have qualified outside Italy.

² Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14/03/1998, p. 36–43).

³ See Case [C-255/02](#), *Halifax and Others*.

accordance with the rules of national law, provided that the effectiveness of EU law is not thereby undermined.

In that context, the Advocate General recalls that the purpose of the directive is to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained. The right of nationals of a Member State to choose the Member State in which they wish to acquire their professional title is inherent in the exercise, in a single market, of the fundamental freedoms guaranteed by the EU Treaties.

The directive fully harmonised the pre-conditions for the exercise of that right. The presentation to the competent authority of the host Member State (in this case: Italy) of a certificate attesting the registration within the bar of the home Member State (in this case: Spain) is the *only condition* required for the registration in the host Member State, enabling that person to practise in the latter under his home-country professional title. It is immaterial, under the directive, that the lawyer has the nationality of the host Member State. In fact, the EU legislature did not intend to make it possible for Member States to engage in reverse discrimination by excluding their own citizens from the rights created by that directive.

Moreover, the Court has held that the directive does not permit the registration of a lawyer in the host Member State to be made conditional on the fulfilment of other conditions (such as a hearing in order to determine language proficiency or upon completion of a certain period of practical experience or of activity as a lawyer in the Member State of origin). If no previous experience is required in order to practise, for example, as an '*abogado*' in Spain, there is no reason that it should be imposed in order to practise under the very same professional title ('*abogado*') in another Member State.

In that regard, no relevance can be attributed to the fact that the lawyer intends to profit from more favourable legislation abroad or that his request for registration is made soon after obtaining the professional title abroad.

Therefore, the Advocate General is of the opinion that **a practice such as the Italian one is likely to undermine, in that Member State, the correct functioning of the system established by the directive and thereby to seriously compromise its objectives.**

Nevertheless, the Advocate General stresses that if the authorities of the host Member State, in an individual case, suspect fraudulent conduct and, following an in-depth examination, find that both the objective and subjective elements of an abuse are fulfilled, they are not prevented from refusing an application on the grounds of abuse of rights. In those specific cases, the directive also provides the possibility to require cooperation of the authorities of the Member State where the title was obtained.

The Advocate General therefore concludes that **the Lawyers' Establishment Directive precludes the practice of refusing, on grounds of abuse of rights, to enter in the Bar Register, in the special section for lawyers qualified abroad, nationals of that Member State who, soon after obtaining the professional title in another Member State, return to their home Member State.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 European Union law or the validity of a European 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 a similar issue is raised.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106