



Press and Information

Court of Justice of the European Union

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

Returning to a Member State in order to practise there the profession of lawyer under the title obtained in another Member State does not constitute an abuse

For EU citizens, the possibility of choosing the Member State where they acquire their title and the Member State where they practise their profession is inherent in the exercise of the fundamental freedoms guaranteed by the Treaties

The purpose of the directive on the establishment of lawyers¹ is to facilitate practice of the profession of lawyer on a permanent basis (in a self employed or salaried capacity) in a Member State other than that in which the professional qualification was obtained, though the profession can be practised only under the home-country professional title. The directive provides that the competent authority of the Member State where the lawyer is established is to register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the Member State where the lawyer obtained his/her title.²

After two Italian nationals (Mr Angelo Alberto Torresi and Mr Pierfranco Torresi) had obtained university law degrees in Italy, they each obtained a university law degree in Spain. On 1 December 2011 they were registered as lawyers in the register of the Ilustre Colegio de Abogados de Santa Cruz de Tenerife (Bar of Santa Cruz de Tenerife, Spain). On 17 March 2012 they submitted applications to the Bar Council of Macerata (Italy) for their registration³ in the 'special section of the lawyers' register'. That section covers lawyers who hold a title issued in a Member State other than Italy, but who are established in Italy.

Since the Bar Council of Macerata did not issue a decision within the period prescribed, Angelo Alberto Torresi and Pierfranco Torresi brought actions before the Consiglio Nazionale Forense (the National Bar Council in Italy; 'CNF') seeking a decision on their applications for registration. They claim that under the legislation in force the registrations applied for are subject to a single condition, namely the presentation of 'a certificate attesting to registration with the competent authority in the home Member State' (in this case, Spain). Since that condition was met in this case, Angelo Alberto Torresi and Pierfranco Torresi consider that they should have been registered.

The CNF considers that it is not open to Angelo Alberto Torresi and Pierfranco Torresi to rely on the directive on the establishment of lawyers if the acquisition of the title in Spain had no other purpose than to circumvent Italian law governing access to the profession of lawyer and thereby constitutes an abuse of the right of establishment. The CNF therefore seeks to ascertain from the Court of Justice whether the competent authorities of a Member State may refuse, on the ground of an abuse of rights, registration in the register of lawyers to nationals of that Member State who, after obtaining a university degree in that Member State, have travelled to another Member State in order to acquire there the professional qualification of lawyer and have subsequently returned to

¹ 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 1998 L 77, p. 36).

² Article 3(2) of the directive.

³ In accordance with Article 3 of the directive.

the first Member State with a view to practising the profession there under the title obtained in the second Member State.⁴

In today's judgment, the Court states, first, that, in order to facilitate the 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 directive on the establishment of lawyers sets up a mechanism for the mutual recognition of the professional titles of migrant lawyers wishing to practise under their home-country title. The EU legislature thereby sought to put an end to the differences in national rules on conditions for registration which gave rise to inequalities and obstacles to freedom of movement. The directive therefore undertakes a complete harmonisation of the conditions applicable to the right of establishment of lawyers.

The Court has previously ruled that the presentation of a certificate attesting to registration in the home Member State is the only condition to which registration of the person concerned in the host Member State may be subject, enabling him to practise in the latter Member State under his home-country professional title.⁵

The Court states that rules of EU law cannot be relied on for abusive or fraudulent ends and, that a Member State is entitled to take any measures necessary to prevent its nationals from improperly circumventing its national legislation. In that regard, the Court states that a finding of abuse requires an objective element (namely, despite formal observance of the conditions laid down by EU rules, the purpose of those rules has not been achieved) and a subjective element (namely, it must be apparent that there is an intention to obtain an improper advantage).

That said, the Court holds that, **in a single market, the right of EU citizens to choose the Member State in which they wish to acquire their professional title and the Member State in which they intend to practise their profession is inherent in the exercise of the fundamental freedoms guaranteed by the Treaties.**

The fact that a national of a Member State who has obtained a university degree in that State travels to another Member State, in order to acquire there the title of lawyer, and subsequently returns to his Member State in order to practise there the profession of lawyer under the professional title obtained in the other Member State **is the realisation of one of the objectives of the directive and does not constitute an abuse of the right of establishment.**

Nor does the fact that the submission of the application for registration in the register of lawyers took place soon after the professional title was obtained in the home Member State constitute an abuse of rights, since there is no requirement in the directive that there be a period of practical experience in the home Member State.

The Court concludes that the fact that a national of a Member State who holds a university degree travels to another Member State in order to acquire there the professional qualification of lawyer and returns to his Member State in order to practise there under the professional title obtained in the other Member State does not constitute an abuse.

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.

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

⁴ In such circumstances, the home-country professional title of a lawyer practising in a host Member State must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State (Article 4(1) of the directive).

⁵ Case [C-193/05](#) *Commission v Luxembourg* and Case [C-506/04](#) *Wilson*. See also Press release [76/06](#).

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