27.2.2013

NOTICE TO MEMBERS

Subject: **Petition 0977/2012 by Renato Tognini (Italian), on recognition in Italy of the professional qualification of 'abogado' and the relevant aptitude test**

1. Summary of petition

The petitioner raises questions about the criteria used by the Italian Ministry of Justice for the recognition of professional qualifications and, more specifically, with regard to the Spanish title of 'abogado'.

In particular, as regards the holders of Italian law degrees, the petitioner asks whether the so-called compensation measures and relevant aptitude test are compatible with Directive 2005/36/EC.

The petitioner also maintains that the Italian Ministry of Justice has, over time, changed the criteria for and substance of the aptitude test by increasing the examination subjects.

2. Admissibility

Declared admissible on 30 November 2012. Information requested from Commission under Rule 202(6).

3. **Commission reply**, received on 27 February 2013

The petitioner requests an assessment of the conformity with EU law of the criteria used by the Italian Ministry of Justice to identify the subjects of an aptitude test for lawyers under Directive 2005/36/EC on the recognition of professional qualifications. In particular, the petitioner refers to a decision by the Italian Ministry of Justice concerning the recognition of qualifications obtained in Italy and Spain which entitle their holder to practice under the Spanish professional title of *abogado*.

On reading the decision by the Ministry of Justice, it appears that the subject of the petitioner's objections is not so much the identification of subjects, as the possibility of gaining an exemption from the written part of the test altogether.
The Commission will, first, outline the general principles flowing from EU law regarding the organisation of compensation measures, such as aptitude tests. Secondly, it will comment on the applicable Italian legislation and the specific decision quoted by the petitioner.
Since the Commission does not have all the relevant information with respect to the specific decision (e.g. the formal evidence of the applicant's qualifications, the full text of the decision, details of the national requirements, etc.), the response will be limited to general observations. Consequently, it should not be construed as a definitive judgement of the compatibility, or otherwise, of the decision with EU law. It should also be noted, in this respect, that EU law gives Member State competent authorities the primary competence and a considerable degree of discretion in this area, as will be shown below.
* *EU law :*
Article 13.1 of Directive 2005/36/EC states:

> If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory. (…)
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> In other words, Member States must allow an EU citizen to practice a regulated profession, even if he or she qualified for this profession in another Member State.

Nonetheless, according to Article 14.1:

> Article 13 does not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if:
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> (a) the duration of the training of which he provides evidence (…) is at least one year shorter than that required by the host Member State;
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> (b) the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;
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> (c) the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's Member State (…) and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.

It follows that the competent authority of the host Member State must compare the training which the applicant for recognition has received to that which is required in the host Member State. The comparison is based both on the duration and on the substance of the training. The objective of an aptitude test is for the applicant to demonstrate that – even if his or her training was shorter or covered substantially different matters than those required by the host Member State - he or she is capable of practicing the profession in the host Member State.
"Substantially different matters" are defined in Article 14.4 as "matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the migrant shows important differences in terms of duration or content from the training required by the host Member State".
In addition, Article 14.5 refers to the principle of proportionality which dictates that "if the host Member State intends to require the applicant to complete an adaptation

period or take an aptitude test, it must first ascertain whether the knowledge acquired by the applicant in the course of his professional experience in a Member State or in a third country, is of a nature to cover, in full or in part, the substantial difference (…)".
Certain criteria for identifying the subjects of an aptitude test can be inferred from these provisions:

i. The subjects must be required of persons trained within the host Member State for access to the profession.
ii. The subjects must not have been covered by the training received by the applicant in any Member State or in a third country.
iii. The applicant has not demonstrated evidence of professional experience which could have led to the acquisition of the knowledge of the subjects.
iv. The subjects must be essential for the practice of the profession.

All these conditions must be fulfilled cumulatively with respect to any subject on which the applicant is to be tested.
By contrast, the Directive is silent on the modalities of the aptitude test. In particular, it does not specify whether the test should be in the written or oral form or both. This is left to the competent authorities who are best placed to determine the best means of testing applicants taking into account the nature of the profession, the individual circumstances of the applicant and any practical considerations which may have to be considered. Of course, they are bound by the principle of proportionality.
Coordinators from all Member States for Directive 2005/36/EC agreed a Code of Conduct which provides competent authorities with guidance and a common reference for applying the Directive's provisions in practice. It defines specific best, acceptable and unacceptable practices, including those related to aptitude tests. However, in the Code of Conduct there is no reference to the questions raised by the petition. The Code only specifies the minimal frequency of the test, ascertains the obligation to provide all the necessary information to the applicants and the applicant's right to resit the test.
* *Italian law :*
Article 22 of the Italian Legislative Decree No 206 of 9 November 2007, faithfully transposes the provisions of Article 14 of Directive 2005/36/EC on compensation measures, providing the general legal framework for the organisation of aptitude tests which is in line with EU law.
The Italian Ministerial Decree No 191 of 28 May 2003 provides detailed rules for organising aptitude tests for lawyers. According to Article 2 of the Decree, the aptitude test consists of two parts: written and oral. The subjects which can be covered in the test are listed in Annex A to the Decree:
1. Constitutional law
2. Civil law
3. Commercial law
4. Labour law
5. Criminal law
6. Administrative law
7. Procedural criminal law
8. Procedural civil law
9. International private law
10. Professional rules and deontology

In the written part of the exam, applicants must write one or more essays on no more than three of the subjects (one of which can be chosen by the applicant) specified in the

recognition decree. (We understand that the 'recognition decree' is the decree issued concerning the particular applicant, following the comparison of his or her qualifications with the national requirements, such as the one quoted by the petitioner.)
The oral part concerns no more than five subjects chosen by the applicant from amongst those listed in the recognition decree, excluding professional rules and deontology.
Thus, the Ministerial Decree defines the subjects which are required under national law and which are essential for the practice of the profession, while allowing for case-by-case decisions on the subjects on which each individual applicant should be tested. This does not raise any objections under EU law.
Article 5 provides for an exemption from the written part of the test, when the applicant has followed a training path which is analogous to the one required in Italy.

Since Directive 2005/36/EC does not specify the form which the test should take, an exemption from one of the parts of the test does not raise any concerns (on the contrary, it seems to reflect the principle of proportionality) - as long as it is applied in an objective, consistent and non-discriminatory manner.
* *Recognition Decision received by the petitioner :*
With respect to the refusal to exempt the petitioner from the written part of the test, this appears to be reasonably and objectively justified. The competent authority explains that an analogous training path would constitute a combination of a diploma (*laurea*), a period of practical training (*tirocinio*) and an exam entitling to the practice of the profession (*esame di abilitazione*). The latter appears to be similar in format to the aptitude test (it involves both written and oral parts). The list of subjects which can be covered in this exam includes all the subjects listed with reference to the aptitude test. It is understood that, in order to gain access to the title of *abogado*, the petitioner only obtained a diploma. The Commission does not dispose of sufficient details concerning the petitioner's training or professional experience to determine to what extent the other conditions may have been fulfilled. In any case, this is primarily for the competent authority to assess in the light of the national requirements.
With respect to the question of identification of the subjects of the aptitude test, we would firstly observe that the possession of an Italian diploma in law does not need to lead to exemptions from the subjects which were covered by this diploma. It is against current national requirements that the competent authority compared the applicant's qualifications in the recognition procedure. It is understood that the national requirements had undergone changes during the time when the petitioner pursued training in Spain, at least in terms of duration (he refers to the "old system" which was comprised of four years of study) and possibly also in substance.
Moreover, in as far as the applicant only obtained a diploma in Italy and did not complete the other Italian requirements of practical training and exam which presumably serve to further the knowledge of the subjects; he might be presumed not to have mastered the subjects to the level or depth required. Consequently, the applicant's Italian diploma must be taken into account, but may be found insufficient to warrant an exemption from a particular subject.
Based on the above, the Commission does not share the view of the petitioner that "mere comparison of the subjects […] would give rise to a paradox, since the content of the aptitude test would be the same subjects provided for in the Italian degree course; subjects the knowledge of which should not be in question, since it had been proved through the awarding of the degree in law – old system – from an Italian university".
As regards the extent to which the petitioner's subsequent professional training and experience in Italy entitles him to an exemption from specific subjects, the Commission must limit itself to the assertion that these have to be taken into account by the competent authority.

The Commission does not have sufficient knowledge of the details of the applicant's professional activities and additional training courses to comment any further on the decision of the competent authority which, in addition, has not been reproduced in full.

Conclusion

The overall legal framework for the organisation of aptitude tests for lawyers seeking recognition of their qualifications in Italy appears to be in line with EU law. The information provided by the petitioner does not constitute evidence of breach of EU law by the Italian competent authority in its decree concerning the recognition of the petitioner's qualifications.