

**ΕΥΡΩΠΑΪΚΟ ΠΑΝΕΠΙΣΤΗΜΙΟ
ΝΟΜΙΚΗ ΣΧΟΛΗ**

ΑΣΚΕΙΝ ΤΗΝ ΔΙΚΗΓΟΡΙΑ

ΔΙΑΛΕΞΗ ΑΡ. 3

ΠΡΟΣΘΕΤΕΣ ΣΗΜΕΙΩΣΕΙΣ ΓΙΑ ΤΟ ΚΟΙΝΟΤΙΚΟ ΔΙΚΑΙΟ.

Το ΔΕΚ ανέλαβε το ρόλο να καλύψει το κενό στις περιπτώσεις όπου δεν είχαν υιοθετηθεί συγκεκριμένες οδηγίες για την αμοιβαία αναγνώριση των προσόντων κάτι το οποίο θα διευκόλυνε την ελεύθερη διακίνηση των αυτοεργοδοτούμενων στην Ευρωπαϊκή Ένωση.

Απεφάσισε ότι οι σχετικές πρόνοιες της Συνθήκης δηλαδή άρθρα 43 και 49, είχαν άμεση εφαρμογή (direct effect).

Περαιτέρω το Δικαστήριο απεφάνθη σε σειρά αποφάσεων του ότι αποτελεί δυσμενή διάκριση κατά παράβαση του άρθρου 43 ως και άρθρα 49-50 σε συνδυασμό με το άρθρο 12 να μην δοθεί άδεια άσκησης επαγγέλματος σε χώρα κράτος μέλος του οποίου τα προσόντα έχουν αναγνωρισθεί σαν ισότιμα με εκείνα τα οποία απαιτούμενα στη χώρα κράτους μέλος όπου επιζητεί να ασκήσει το επάγγελμα.

Χαρακτηριστικό είναι το απόσπασμα για τη νομολογία του Ευρωπαϊκού Δικαστηρίου από την 10^η έκδοση του EU Law Steiner & Woods σελ. 517, το οποίο έχει ως εξής:

«In Thieffry v. Conseil de l'Ordre des Avocats a la Cour de Paris (case 71/76) the Court held that the French Bar Council could not refuse to allow Thieffry, a Belgian national with a Belgian law degree, to undertake practical training for the French bar, as his Belgian degree had been recognized by the University of Paris and he had acquired a qualifying certificate in France for the profession of avocat. (See also Patrick v Ministre des Affaires Culturelles (case 11/77), recognition of architecture qualification in the absence of express recognition by French law).

Where a directive has been issued for the mutual recognition or harmonization of qualifications in a particular profession that profession may no longer insist on compliance with its own requirements by persons who have qualified in another Member State according to the terms of the directive. In Broekmeulen (case 246/80) the Dutch General Practitioners' Committee was unable to refuse Broekmeulen permission to practice as a GP in Holland even though he had qualified as a GP in Belgium, where it was not necessary to complete the three years' specialized training required for GPs in Holland. The relevant

directive (75/362) did not require GPS to undergo training additional to their original qualification. Parties may not, however, claim freedom of establishments or freedom to provide services in reliance on a directive until the period provided for its implementation has expired (Auer (case 136/78), or where they do not fall within the terms of the directive (Dreessen v Conseil National de l' Ordre des Architectes (case C-447/93))

In Arantis v Land Berlin (case C-164/94), the ECJ held that where a profession was not regulated by an EC directive, the then Articles 6 and 52 (now 12 and 43) EC required the authorities in a host Member State to take into account an individual's qualifications and other relevant experience acquired in the home state. In doing so, the ECJ extended its ruling in Vlassopoulou (case C-340/89), which is discussed below in relation to regulated professions, to unregulated professions. In both Arantis and Vlassapoulou (and arguably Thieffry), we can see the ECJ adopting an approach that is based on the idea of mutual recognition – that is, a recognition that, in principle, the training and experience gained throughout all Member States should be acceptable in other Member States and should therefore be taken into account when assessing an individual's qualifications and experience. What is acceptable in one Member State, broadly speaking, is acceptable in all. This will have a significant effect in blocking any remaining gaps in the protection afforded to those with qualifications awarded by a Member State which are not covered by a directive”.

Η εξέλιξη του Ευρωπαϊκού Δικαίου αναπτύσσεται επίσης συνοπτικά στο σύντομο αλλά πολύ χρήσιμο βιβλίο του Mike Cuthbert, «European Union Law 2007-2008». Τα σχετικά αποσπάσματα έχουν ως εξής

«In the case of lawyers, it is obvious that recognition of their professional qualifications and admission to the appropriate professional organization is also required and can cause problems. Generally, each Member State has remained free to regulate the exercise of the legal profession in its territory, the ECJ said that Member States are required to recognize a legal diploma obtained in another Member State to register the holder for pre-qualifying practical training although in the Morgenbesser case (2004)”

“Directive 77/249 was specifically aimed at lawyers, but it is only concerned with the provision of services and not the right of establishment. It makes provision for lawyers to carry out their profession in another Member State on a temporary basis”

“However, recognizing the time involved in such a process as producing specific directives, the Commission changed its strategy and concentrated on producing a general directive that would apply to all professions. This directive applied to the legal profession and is the

Mutual Recognition Directive 89/48. Like all directives on establishment, Directive 89/48 benefits Community citizens with regard to qualifications awarded in a Member State. Under this directive, recognition is to be given to diplomas as defined by Art 1(a). There must be three essential characteristics for such 'diplomas'; it must be awarded by a competent authority in a Member State following the successful completion of a course lasting at least three years at a university or equivalent institution, plus professional training. Finally, such a 'diploma' must qualify the holder for the pursuit of a regulated profession in a Member State. The profession of a lawyer is in the list of regulated professions. Article 3 of the directive provides the basic rule that if a Member State requires a 'diploma' as a condition for exercising a regulated profession, it must accept a 'diploma' obtained in another Member State. In contrast to the situation where a lawyer is providing a 'service' of a temporary nature, when he or she is exercising the right of establishment, the lawyer is entitled to use the professional designation of the Member State in which he or she practises. Thus, a French avocat who establishes himself and practises in the UK can call himself a solicitor. Negotiations began within the EU legal organizations with regard to the Rights of Establishment Directive or 'the Lawyers Directive 98/5, which is designed to facilitate the practice of a lawyer on a permanent basis in a Member State other than the one he or she obtained his or her qualification in. Having proved that he or she is already registered as a lawyer in another Member State, after three years as a lawyer in that Member State, he or she will have the right to gain admission to the legal profession of the host country and use the appropriate professional title. Thus, if he or she was an avocat, he could become a solicitor after that period elapsed".

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