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## THE VALUE OF ESP FOR LAWYERS AGAINST THE EMPLOYMENT POLICY OF THE EU

The question in the title points directly to an fundamental issue facing law students and recently qualified lawyers, as well as professionals in other fields. As a law student, my aim in writing this paper is to discuss the importance of acquiring specialized (legal) knowledge of a foreign language and its effect on employment opportunities for Polish law graduates in a European context.

Polish law students and their prospective employers are aware that following Polish accession to the EU in 2004, Polish lawyers are affected by the many significant changes to have occurred in recent years in line with the provisions of the EU internal market. The free movement of workers has created new employment opportunities for European lawyers, while the freedom of establishment has removed restrictions preventing nationals of one Member State from taking up and pursuing activities as self-employed persons or setting up and managing companies or firms in the territory of another Member State.<sup>1</sup> It goes without saying that to take advantage of such freedoms in another Member State requires a good knowledge of the relevant language, especially in the legal profession, where client contact is crucial.

Polish law graduates report that almost every legal position advertised requires a knowledge of legal English, German or French, which should not cause much surprise. Most Polish legal firms cooperate with their counterparts in other EU countries under the freedom of establishment. The question can fairly be asked: How well do Polish universities and colleges prepare students to succeed in the jobs market for such positions?

Each year the law faculties of various schools of higher education are ranked according to their performance. However, the rankings do not assess whether these institutions are able to provide young lawyers with the relevant skills to practise abroad.

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<sup>1</sup> Wrobel 2000: 233.

Language schools in Poland compete with each other to offer a wide variety of specialized courses, with a plethora of promotional leaflets appearing at the beginning of each academic year. However, these courses are rather expensive and therefore often beyond the reach of students: specialized courses cost almost twice as much as general English courses. Many students express the opinion that they would sign up for such courses were the prices not so high. Another difficulty is the lack of time caused by their heavy workload at university.

It should be noted that students in all Polish universities must pass an examination in foreign language proficiency. Students of my faculty attend two years of foreign language classes free of charge at the University Language Centre, at the end of which they must take an exam. In almost every case, law students are taught general English, much the same as their counterparts studying medicine or architecture, for example. As a result, unless they pay to attend a specialized course, law graduates have little idea about the legal language of other countries.

An ideal solution to this problem would be to allow students to choose legal language as their free foreign language course. But I am convinced that in order to be effective, such courses should be taught by lawyers. As in all fields, such as medicine, pharmacy or architecture, the law has its own specialized professional language, with which lawyers must become acquainted. However, although group language courses in legal language would appear to be a potential solution, they are unlikely to become reality. While researching this article, I asked several lawyers and legal advisers whether they would be prepared to teach such courses. The answers were mainly negative, the reasons most frequently given being lack of time and proficiency in a foreign legal language.

The opening up of the legal profession in the EU has meant that Polish lawyers should become familiar with the legal language of other countries. In this article I will consider the question of practising law in other Member States of the European Union.<sup>2</sup> I believe that this issue is extremely important because it shows how the legislature of the European Union, as well as individual Member States, regard the ability to use the language of the host country.

Of central importance is Directive 98/5/EC<sup>3</sup> of the European Parliament and of the Council of 16 February 1998. The purpose of this Directive (known as *The Establishment Directive*) is to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. In legal language, this Act is commonly referred to as the Directive on the establishment of lawyers. European Union law did not previously regulate the practice of the profession of lawyer within the EU on the basis of professional qualifications obtained in one Member State. During the existence of the European Communities, it was much more difficult to practise law outside

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<sup>2</sup> O'Leary 1999.

<sup>3</sup> 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 Official Journal L 077, 14/03/1998 P. 0036-0043.

one's home country: legal qualifications were so country specific that it was not practical to work as a lawyer in another Member State. The Directive, however, addresses this problem. According to Article 2, any lawyer from the European Union has the right to practise their profession in another Member State under the professional title obtained in their country of origin. A lawyer wishing to practise on a permanent basis in another EU country is merely obliged to register their residence. The receiving State is required to register them on an appropriate list.

The main purpose of this Directive is "to facilitate the practice of the profession of lawyer in a self-employed capacity or as an employed person in a Member State other than that in which the professional qualification was obtained." However, it is not entirely clear what the phrase "to facilitate the practice of the profession" means. It prompts the question: Can a given Member State verify the knowledge of a lawyer from another EU country<sup>4</sup>?

Examining the practical aspects of legal professions in other EU countries, the Court of Justice of the European Union cannot be passed over in silence. If Member States have any problems with the correct interpretation of EU legislation, the Court of Justice evaluates all legislation introduced by the European Union. This issue is presented on the basis of this Directive because it does not include any regulation which would enable a Member State to independently verify the knowledge of such a person.<sup>5</sup>

This may be seen in the case of Graham Wilson, an English barrister who began practising English, European and international law in the Duchy of Luxembourg in 1994. However, the Bar Council of Luxembourg required him to pass an oral language exam in French, German and Dutch as a condition of practising law in the Duchy and refused to register him until he did so. Mr Wilson challenged this decision and the case was eventually referred to the European Court of Justice, which ruled that: "Every lawyer has the right to practise on a permanent basis in any Member State under his home-country professional title without a prior test of his language skills."<sup>6</sup>

This ruling supports the intention of the legislature to enable lawyers from any EU country to practise their profession freely, denying the right of any Member State to insist on legal professionals meeting specific language requirements as a condition of registration. In practice, however, the operation of the market for legal services will ensure that practitioners possess adequate language skills, and any qualified lawyer wishing to practise in another country will, as a practical (as opposed to legal) requirement, need to acquire competence in the legal language of the host country.

Polish universities are slowly but surely taking steps to provide students with legal knowledge in a foreign language. The Faculty of Law and Administration

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<sup>4</sup> Weatherill and Beaumont 1991: 409–413.

<sup>5</sup> Kożuch 2011: 122.

<sup>6</sup> ECJ of 19 September 2006 on Graham J. Wilson against the Order des avocats du Barreau de Luxembourg (C-506/04).

of the Jagiellonian University in Krakow, where I am a student, has introduced new regulations requiring all law students to pass at least one course in a foreign language. In 2000 it also founded the Coordination Centre of Schools of Foreign Law in which the Schools of American, Austrian, French, German and Ukrainian law offer professional legal courses conducted by lecturers from collaborating universities. Some of these schools require prospective students to pass a language test, which may constitute a limitation.

To sum up, the modern job market requires familiarity with at least one foreign legal language. The knowledge of foreign languages is now a basic requirement of employers in each EU country. It is also essential in dealing with EU institutions and society. Additionally, foreign language training, even at elementary level, will help create a generation unrestricted by linguistic and cultural borders.

Skills acquired during their studies will enable law graduates to practise law not only in their own country but also in other Member States, as well as in many EU institutions cooperating with state or local government institutions. After gaining the necessary experience, a law graduate will be a valuable, qualified and versatile worker. The content of European Communication Studies provides interdisciplinary competence, allowing graduates of this specialization to make use of their knowledge of language and many fields of the law, especially those connected with the legal and economical bases of the functions of European Union institutions.

Directive 98/5 illustrates that the EU legislature is positively disposed to the provision of services or hiring of lawyers from other Member States. This should come as no surprise because it is consistent with the principle of the free movement of workers. EU law requires Member States to accord such employees the same rights in employment and labour law as they do their own citizens. Lawyers qualifying in one Member State are entitled to practise in any other without the need to fulfil any additional language requirement in the host country.

There is certainly a need for university law departments to guarantee students the opportunity of learning foreign legal language as an integral part of their studies. Equally, students should be aware of the absolute necessity of acquiring a foreign language and demonstrate a greater willingness to do so.

As a member of the EU, Poland cannot isolate itself by failing to equip its students with the vital skill of competence in a foreign language. I am hopeful that the situation will change and Poland will adopt the model of education which exists in other European countries. I would like to conclude by quoting from Georg Lichtenberg: "What is the impact on a society that does not learn any foreign language? Probably comparable to the total isolation of an individual human being."

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