

NORLAM'S COMMENTS REGARDING AMENDMENT OF THE LAW ON THE LEGAL PROFESSION AND THE LAW ON THE STATE GUARANTEED LEGAL AID – THE OPPORTUNITY OF FOREIGN ADVOCATES TO PRACTICE LAW IN NORWAY

I Introduction

During a meeting with The Legal Department of the Ministry of Justice on 22 Januar 2010, Norlam was asked to give an overview of the regulation of the Norwegian solution in regards to the possibility for foreign lawyers to practice in Norway.

Norway is not a member of the EU, but of the EEA (The European Economic Area). Thus, Norway has adopted and implemented a vast amount of European practice and regulations, one of them being the standards connected to the question of foreign EEA advocates' right to practice in Norway. There are several ways for EEA advocates to practice in Norway and also another set of rules regarding foreign advocates outside the EEA.

Previously Norway had an agreement with the other Nordic countries to consider the legal education in these countries as equal. This arrangement has now been extended to include all countries within the EEA.

In the following Norlam will try to give an overview of the solution the Norwegian authorities have chosen. We will refer to Norwegian legislation and regulations in this field, some comments from the Norwegian Bar Association and the Norwegian Supervisory Council for Legal Practice, a few decisions by the Norwegian Supreme Court and finally present a brief summary and final comments on the topic.

II The Norwegian legislation and regulations

i) The basis for this topic is set by the EEA standards. These standards, together with decisions from The EFTA Court, creates the foundation and framework for the various national provisions each country within the EEA adopts. In Norway, the national legislation gives the statutory authority for further detailed regulation related to this subject. Norway has chosen to give an extended opportunity for advocates within the EEA to practice law in Norway than the EEA standards opens for.

ii) Norwegian legislation

The Act relating to the Courts of Justice states the following:

CHAPTER 11. LEGAL AID WORK AND LAWYERS

I. Legal aid work

§ 218. Any person who wishes to carry on legal aid work must have a licence to practise as a lawyer pursuant to section 218 b. By legal aid work is meant professionally or constantly giving legal aid.

From the provision in the first sentence of the first paragraph the following exceptions apply:

...

5. The King will by regulation prescribe to what extent and on what conditions foreign lawyers shall have the right to provide legal aid.

§ 218 a. The King may decide that any person who wishes to give legal aid pursuant to section 218, items 1 and 3 to 5, shall provide security for any liability to pay compensation that the said person may incur in carrying on such legal aid work. The King may make further rules relating to the provision of security.

For legal aid pursuant to section 218, second paragraph item 1, the King may make provisions concerning the duty to notify and the duty of the person giving legal aid to establish beforehand that the conditions for giving legal aid have been fulfilled, including the submission of a police certificate. In the case of permissions granted pursuant to section 218, second paragraph items 3 and 5, conditions and restrictions may be imposed.

The Ministry may impose a prohibition against giving legal aid pursuant to section 218, second paragraph item 1, and revoke permissions granted in accordance with section 218, second paragraph items 3 and 5, if the person concerned is or becomes guilty of conduct that renders the said person unfit or unworthy to give legal aid, or the said person contravenes provisions relating to the furnishing of security in accordance with the first paragraph or provisions, conditions or restrictions in accordance with the second paragraph.

II. Lawyers

§ 218 b. Licence to practise as a lawyer shall be granted by the Ministry. It may only be granted to persons who have reached 20 years of age and who prove by reliable testimony that they are of respectable character. Moreover there must be no such circumstances as would cause the licence to practise law to be invalidated or revoked pursuant to the provisions of sections 229, 229 a or 230. If a previous licence to practise law is revoked for reasons mentioned in section 229, second paragraph items 2 to 4, no new licence shall be granted until the matter that led to the revocation has been settled.

§ 219. In order to obtain permission to appear as an advocate before courts other than the Supreme Court (a practising certificate) the applicant must establish:

1. that the said person has obtained a law degree, and
2. that the said person has for altogether not less than two years after obtaining a law degree been engaged in practice
 - a. as an authorized assistant to a lawyer who himself carries on a legal practice, cf. the third paragraph,
 - b. as a judge or deputy judge,
 - c. in a position with the prosecuting authority in which conducting legal proceedings is an essential part of the work, or
 - d. as a university lecturer in jurisprudence.

In order to fulfil the requirement for practical experience in item 2 of the first paragraph the Ministry may by regulation or in particular cases wholly or

partly approve other legal work.

The King may by regulation prescribe rules relating to procedural experience as a condition on which practical experience mentioned in item 2 of the first paragraph shall be taken into account.

The King may by regulation determine that the completion of a course in subjects of special significance for legal practice shall be a condition for granting a licence to practise law. The King may make further rules concerning the contents and completion of the course.

The King may by regulation make provisions concerning the issuing of a licence to practise law on the basis of a corresponding right in a foreign country.

§ 241. When this Act or any other Act requires a law degree for appointment to an office or employment in a position, the authority concerned may in special cases accept a similar foreign law degree, provided that it is established that the person concerned has sufficient knowledge of Norwegian law. The decision shall be made after an overall assessment of the degree obtained and the work of the person concerned, especially in this country, supplemented by a test if necessary. If the Act requires a law degree of the highest class, the foreign law degree must be of a similar class.

For other cases in which this Act or any other Act requires a law degree, the King may make regulations concerning to what extent and on what conditions foreign legal qualifications may be accepted.

iii) Regulations

Regulations for Advocates given by the Norwegian Ministry of Justice and the Police pursuant to The Act relating to the Courts of Justice.

Please see attachment “Regulations for Advocates” – Chapter 9 and 10 which regulates Approval of foreign legal education as a basis for being licensed as an advocate, etc. and The opportunity of foreign advocates to practice law in Norway.

III The Norwegian Bar Association

The Norwegian Bar Association has several foreign advocates as members. What they have in common is that they have acquired a license to practice law in Norway from the Supervisory Council for Legal Practice.

There is a difference regarding the type of license given to advocates from countries outside the EEA (The European Economic Area) and those within, which enables them to provide legal assistance on a permanent basis in Norway. There is also a difference between those who wish to provide legal aid on a permanent basis in Norway, and those who only want to operate as “guest advocate”.

i) Advocates from outside the EEA

If advocates from countries outside the EEA wish to provide legal assistance on a permanent basis in Norway, consistent with section 10-6 in the Regulations for Advocates, they have to acquire a license from the Supervisory Council for Legal Practice in order to be able to

"provide legal assistance in foreign and international law." This means that they can also provide legal assistance in foreign and international law, as long as they have a license from the Supervisory Council for Legal Practice. These advocates can provide legal assistance during legal proceedings and outside, as long as it is done in accordance with section 10-4, cf. 10-7

Furthermore, according to section 10-8, those who wish to provide legal assistance in accordance with their license, cf. § 10 6, must provide a security. In addition, they have to meet two other conditions:

- a) To make a financial contribution to the Supervisory Council for Legal Practice and to the Disciplinary Council for Advocates (both contributions will be collected by the Supervisory Council)
- b) To provide a willingness declaration from a registered public accountant. It is possible to apply for a dispensation from the willingness declaration. Advocates may be eligible for dispensation if they are permanently employed and lack access to client assets.

ii) Advocates within the EEA

Advocates operating within the EEA must, according to section 10-2, submit a note with attachments to the Supervisory Council for Legal Practice to prove that they are qualified before being allowed to establish a permanent legal practice. EEA advocates can provide legal assistance in foreign, international and Norwegian law. The EEA advocates can also provide legal assistance during legal proceedings and outside, cf. 10-4. Moreover, they have to provide a security before beginning their practice. In addition, they have to fulfill two other conditions:

- a) To make a financial contribution to the Supervisory Council for Legal Practice and to the Disciplinary Council for Advocates (both contributions will be collected by the Supervisory Council)
- b) To provide a willingness declaration from a registered public accountant. It is possible to apply for a dispensation from the willingness declaration. Advocates may be eligible for dispensation if they are permanently employed and lack access to client assets.

iii) Guest Advocates

Regarding foreign advocates' permission to act as "guest advocate", section 10-10 states that "Foreign advocates established in other countries can provide legal assistance in Norway". Section 10-10 deals with:

- Foreign advocates outside the EEA
- Foreign advocates within the EEA
- Advocates without permanent practice in Norway
- Advocates that have practice outside Norway and who are operating under another country's jurisdiction

The regulation does not restrict advocates to practicing foreign and international law. In other words, they can provide services in accordance with Norwegian law. They are not required to acquire a license from the Supervisory Council for Legal Practice, but the advocates may be required to submit documentation that they actually practices law abroad, cf. section 10-12.

IV Information provided by the Supervisory Council for Legal Practice

i) Foreign advocates within the EEA may choose between two different options to practice law in Norway.

a) The advocate can practice as an EEA advocate, using his/her licence from the native country to practice.

b) Take an exam to obtain a Norwegian licence.

The first option implies that the advocate can establish a legal practice as an EEA-advocate in Norway through a simple procedure. The advocate can use his/her title, but The Norwegian Supervisory Council for Legal Practice needs to approve the legal licence from the native country of the advocate. The advocate will then be allowed to practice Norwegian law as well as international law.

If the EEA-advocate wants a Norwegian licence there is a demand that the advocate passes an exam. This exam is provided by the University of Oslo and consists of a written and an oral part. The exam is a qualification test both in regards to the professional/occupational competence as well as the Norwegian language.

The Act relating to the Courts of law § 241 concerns the question whether a foreign law degree should be accepted as equal to the Norwegian law degree. This provision must be seen in connection with Regulations for Advocates § 9-7 and The Courts of Law Act § 219. These are important provisions in Norwegian practice in relation to the right of foreign EEA advocates to practice in Norway.

The Supervisory Council of Legal Practice also informed that to be authorized as an advocate intern is regarded very important for many foreign EEA advocates. In this way they get the opportunity to demonstrate their skills towards the legal professionals in Norway.

Norway has chosen to go further than the EEA directive opens up for. If an EEA advocate has the highest legal education in his/her native country, this education will be regarded equal to the Norwegian legal education.

By giving the EEA-advocates this extended right, they will have fulfilled the condition to education in The Act relating to the Courts of Justice § 219. In addition the advocates need to fulfil the other conditions to be authorized as an advocate intern mentioned in the same provision. According to the Supervisory Council for Legal Practice, this opportunity is widely used by foreign EEA advocates in Norway.

A lot of EEA advocates choose to become an advocate intern in Norway even though they are advocates in their native country. The main reason being a wish to prove their competence within the Norwegian legal system. Afterwards many of them will take the exam to obtain an advocate licence in Norway.

Another option for obtaining the licence is to go through the same qualification process as Norwegians do. We have previously commented on this process to the Ministry of Justice on 19 October 2010.

ii) Foreign advocates outside of the EEA faces a much more strict evaluation. According to the Norwegian regulation they may obtain a Norwegian licence, but the professional assessment of the qualifications of the advocate is measured against a far stricter norm. The advocate must have practiced Norwegian law for several years and, if possible, get a Norwegian legal education as a supplement.

V Court decisions from the Norwegian Supreme Court of Justice

i) Norlam has not been able to find any Supreme Court decisions regarding advocates from outside of the EEA, but below we will mention two decisions concerning EEA advocates from Germany and Lithuania. Both decisions relates to requests for appointment as a guest advocate in a concrete case, not requests for a permanent appointment as an advocate in Norway. In the first case, the German advocate was appointed as a lawyer in the particular case and in the second case the Lithuanian advocate was denied appointment.

ii) In 2000 a German advocate got permission from the Appeal Committee of the Supreme Court to function alone as a legal counsel for the appellant in a civil case concerning physical custody of a child. The Appeal Committee points out the rights of foreign advocates within the EEA to perform legal assistance in Norway. The procedure is written and the notice of appeal was in German, but was translated to Norwegian according to Norwegian legislation.

iii) In a decision from the Supreme Court in 2005 the court denied a Lithuanian advocate the right to be appointed as a defence advocate for the defendant, who also was Lithuanian. In principle, since the advocate was practicing within the EEA, he could be appointed as a defence lawyer in all courts within the EEA. According to Norwegian legislation he should be appointed as a defence lawyer in the case unless this would lead to a substantial delay of the trial or other conditions make an appointment inadvisable/not recommended according to the Norwegian Criminal Procedure Code. To appoint an EEA advocate as a lawyer in Norway, legislation and regulations demand that the foreign advocate is qualified, where language skills and knowledge of Norwegian legislation normally will be decisive.

The Supreme Court states that an EEA advocate that does not master the Norwegian language to satisfaction should, according to Regulations for Advocates 10-4 third section, function jointly with a Norwegian advocate during the legal proceedings, unless the court consents to the lawyer appearing alone. In the request for appointment as a defence advocate there was no information regarding which language the advocate would use during the proceedings or how extensive his knowledge of Norwegian criminal law and criminal procedure was.

In the same case there was also an alternative request to appoint the Lithuanian advocate as a co-defence advocate, but it was also denied due to the fact that the case in itself was not so large and wide-ranging that it was necessary with more than one defence advocate.

VI Summary and final comments

Although Norway is not a part of the EU, there exists a lot of cooperation and common agreements between Norway and the EU. It is therefore natural that Norway, in the legal field,

gives access to European advocates to practice in Norway as Norwegian advocates then will receive the same benefits outside of Norway. There are several different legal traditions within Europe, but since each country have special requirements to offer foreign EEA advocates a possibility to practice outside of their native country, it forms a good foundation for exchange of knowledge and a chance of broadening the international experience.

For Moldova we believe that it would mostly be lawyers from the neighbouring countries who speak Romanian or Russian, who would benefit from this opportunity to practice in Moldova. In this regard, we think Moldova should look into the possibilities of having a common agreement with other countries, so the Moldovan advocates will have the same opportunity to practice in such countries.

To sum up what is mentioned above, it all comes down to skill. It is important to find a way to allow foreign advocates a chance to practice law in Moldova, but at the same time to ensure the qualification of these advocates. With reference to the Norwegian solution, Moldova should look into possibilities of different solutions for advocates from certain areas, e.g. neighbouring countries with similar legal traditions and languages, and advocates outside of this area. There should also be different requirements for advocates who want to practice law in Moldova on a permanent basis and those who want to be appointed as a lawyer in an isolated, concrete case.

Norlam also believes that there should be some regulation concerning language skills to ensure that the legal proceedings are carried out in a professional and comprehensive way, either through a language test or an accepted translation arrangement.

Norlam
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Helle Gulseth
Rule of Law Adviser, Defence lawyer

Attachment: The Norwegian Regulations for Advocates Chapter 9 and 10.