ORDER OF THE GENERAL COURT (Seventh Chamber)

23 May 2011 *

In Case T-226/10,

Prezes Urzędu Komunikacji Elektronicznej, established in Warsaw (Poland), represented by H. Gruszecka and D. Pawłowska, lawyers,

applicant,

v

European Commission, represented by G. Braun and K. Mojzesowicz, acting as Agents,

defendant,

Application for annulment of Commission Decision C(2010) 1234 of 3 March 2010, adopted pursuant to Article 7(4) of Directive 2002/21/EC of the European Parliament and of the Council (OJ 2002 L 108, p. 33), ordering the Polish regulatory authority

* Language of the case: Polish.

in the field of electronic communications services and postal services to withdraw two notified draft measures concerning the national wholesale market for IP traffic exchange (IP transit) (Case PL/2009/1019) and the wholesale market for IP peering with the network of Telekomunikacja Polska S.A. (TP) (Case PL/2009/1020),

THE GENERAL COURT (Seventh Chamber),

composed of A. Dittrich, President, I. Wiszniewska-Białecka and M. Prek (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order

Facts and procedure

1 The present action was brought on 14 May 2010 on behalf of the applicant, Prezes Urzędu Komunikacji Elektronicznej (Chairman of Electronic Communications Office ('the UKE')) by Hanna Gruszecka and Dorota Pawłowska.

2 By letter from the Registry of the General Court of 16 November 2010, the applicant was requested to clarify whether the lawyers who signed the application on his behalf were, at the time of bringing the action, linked to him by a relationship of employment. The parties were also requested to express their views as to whether the application was in order in light of the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, the first paragraph of Article 21 of the same statute, the first subparagraph of Article 43(1) of the Rules of Procedure of the General Court and the order of the Court of 29 September 2010 in Joined Cases C-74/10 P and C-75/10 P *EREF* v *Commission*, not published in the ECR, if the lawyers who signed the application on behalf of the applicant were, at the time of bringing the action, bound to him by a relationship of employment.

3 The applicant and the European Commission submitted their written observations within the prescribed time-limit.

4 Upon a change in the composition of the Chambers of the General Court, the case was assigned to the Seventh Chamber.

Forms of order sought

5 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

6 The Commission claims that the Court should:

— dismiss the action as inadmissible in part and, in any event, wholly unfounded;

— order the applicant to pay the costs.

Admissibility

7 Under Article 113 of the Rules of Procedure, the General Court may at any time, of its own motion, having heard the parties, decide whether there exists any absolute bar to proceeding with an action. This decision is taken under the conditions laid down in Article 114(3) and (4) of the same rules.

8 In accordance with Article 114(3) of the Rules of Procedure, the remainder of the proceedings are to be oral, unless the Court decides otherwise. In the present case, the Court considers that it has sufficient information from the contents of the file and that it is unnecessary to open the oral procedure.

Arguments of the parties

9 In his reply to the written questions of the Court, first, the applicant asserts that although the action was indeed brought by legal advisors who have an employment relationship with UKE, those advisors are, nevertheless, independent of the applicant. In support of that assertion, the applicant submits, firstly, that under Polish legislation, it is the Director-General of UKE, and not the Chairman, who is competent as regards the establishment, the duration and the continuance of their employment relationship; secondly, that the legal advisors fall within a category of independent posts which are directly answerable to the Director-General of UKE; and thirdly, that pursuant to the legislation concerning legal advisors, a legal advisor practicing his profession within the framework of an employment relationship holds an autonomous position which is under the direct authority of the director of the organisational entity. The applicant also points out that professional independence is one of the fundamental aspects of the profession of legal advisor. Thus, a legal advisor employed under an employment contract is in no way bound by hierarchical instructions.

10 Second, and following the first argument, the applicant submits that there is no need to answer the Court's second question. In the alternative, the applicant maintains that the factual circumstances at the origin of the order in *EREF* v *Commission*, paragraph 2 above, and the judgment of the Court of Justice of 14 September 2010 in Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others* [2010] ECR I-8301, are diametrically opposite to those in the present case. In this respect, the applicant points out that the Court had based its decision on the economic subordination of lawyers to the undertakings which employ them as well as on the influence of those lawyers, stemming from the posts they occupy, and on the activity and the commercial strategy of their employers. However, the role of the legal advisors in the present case is solely and exclusively to provide legal assistance through representation exercised on the basis of the authority to act conferred by the applicant.

11 The Commission considers that the existence of an employment relationship between the applicant and the lawyers who brought the action means that the action must be dismissed as manifestly inadmissible.

Findings of the Court

12 In accordance with the first, third and fourth paragraphs of Article 19 of the Statute of the Court of Justice, applicable to the General Court by virtue of Article 53 of that statute:

'The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

…

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.'

13 Under Article 1(2) of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17) as amended by Annex II of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the

Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 257), persons authorised to practice their professional activities in Poland under the title of legal advisor (Radca Prawny) or lawyer (Adwokat) carry out the activities of a lawyer.

14 In accordance with the first paragraph of Article 21 of the Statute of the Court of Justice, 'a case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory …'

15 Pursuant to the first paragraph of Article 43(1) of the Rules of Procedure, 'the original of every pleading must be signed by the party's agent or lawyer'.

16 According to settled case-law, it is apparent from the provisions cited at paragraphs 12, 14 and 15 above, and in particular from the use of the term 'represented' in the third paragraph of Article 19 of the Statute of the Court of Justice, that, in order to bring an action before the General Court, 'a party', within the meaning of that article, is not permitted to act itself but must use the services of a third person authorised to practise before a court of a Member State or of a State which is a party to the Agreement on the European Economic Area (EEA) (order of 19 November 2009 in Case T-94/07 *EREF* v *Commission,* not published in the ECR, paragraph 14 and the case-law cited).

17 That requirement to use a third person is based on a view of the lawyer's role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs. That conception reflects legal traditions common to the Member States and is also to be found in the Union legal order, as is precisely demonstrated by

Article 19 of the Statute of the Court of Justice (order in *EREF* v *Commission*, paragraph 16 above, paragraph 15).

18 In the present case, it should be noted from the outset that the reference made by the applicant to the obligations of independence flowing from the professional rules regulating the profession of legal advisor is not enough in itself to demonstrate that Ms Gruszecka and Ms Pawłowska were entitled to represent the applicant before the Court. Indeed, the concept of the independence of lawyers is determined not only positively, that is by reference to professional ethical obligations, but also negatively, that is to say, by the absence of an employment relationship (see, to that effect, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others*, paragraph 10 above, paragraphs 44 and 45, and *EREF* v *Commission*, paragraph 2 above, paragraph 53).

19 Secondly, it must be stated that the applicant admits that Ms Gruszecka and Ms Pawłowska are bound by an employment relationship with UKE. It states, in this respect, that the Director-General of UKE determines '[their] recruitment, [their] working conditions and the termination of [their] employment relationship'.

20 Finally, again according to the applicant, UKE's mission is to serve its Chairman in the statutory tasks entrusted to it.

21 Accordingly, even if a clear distinction could be made between the Chairman of UKE and UKE and even if there is no formal employment relationship between the applicant and its legal advisors, the fact remains that the requirements specified by the case-law cited at paragraphs 16 and 17 above are not met in the present case. Indeed, the existence of a subordinate relationship within UKE — even if only to its

Director-General — when their sole function is to assist the applicant, implies a degree of independence less than that of a legal adviser or a lawyer practicing in a firm that is external to their client.

22 That finding is not invalidated by the applicant's citations of Polish legislation regulating the profession of legal advisor. As pointed out in paragraph 18 above, professional discipline is not enough in itself to demonstrate that the requirement of independence is satisfied. Furthermore, according to case-law, the provisions concerning the representation of non-privileged parties before the Court must be interpreted, as far as possible, independently and without reference to national law (order in *EREF* v *Commission*, paragraph 16 above, paragraph 16).

23 It follows from the above that the employment relationship linking Ms Gruszecka and Ms Pawłowska to UKE is not compatible with the representation of the applicant before the Court.

24 Accordingly, since the application initiating proceedings was signed by Ms Gruszecka and Ms Pawłowska, the present action has not been brought in accordance with the third and fourth paragraphs of Article 19, the first paragraph of Article 21 of the Statute of the Court of Justice or with the first subparagraph of Article 43(1) of the Rules of Procedure.

25 It follows that the application must be dismissed as inadmissible.

Costs

26 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **Prezes Urzędu Komunikacji is ordered to pay the costs.**

Luxembourg, 23 May 2011.

E. Coulon
Registrar

A. Dittrich
President