Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

9 March 2022*

(Action for annulment – Representation by a lawyer who is not an independent third party with regard to the applicant – Inadmissibility)

In Case T-727/20,

Nigar Kirimova, residing in Munich (Germany), represented by A. Parassina and A. García López, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by G. Predonzani and A. Söder, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU seeking annulment of the decision of the Executive Director of EUIPO of 30 September 2020 rejecting the applicant's request for an exemption from the requirement to be a national of one of the Member States of the European Economic Area (EEA) upon which inclusion on the list of professional representatives authorised by that office depends,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Gervasoni, President, L. Madise, P. Nihoul, R. Frendo (Rapporteur) and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: English.

Order

Background to the dispute

1 The applicant, Ms Nigar Kirimova, was, at the time of the facts, a lawyer in the law firm Brandstock Legal Rechtsanwaltgesellschaft mbH ('Brandstock Legal'). On 10 October 2019, she submitted to the European Union Intellectual Property Office (EUIPO) an application for inclusion on the list of professional representatives before that office in accordance with Article 120 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1). Since she was an Azerbaijani national, she requested, at the same time, on the basis of paragraph 4(b) of that article, an exemption from the requirement to be a national of one of the Member States of the European Economic Area (EEA) set out in Article 120(2)(a) of that regulation ('the nationality condition').

2 By letter of 30 January 2020, EUIPO informed the applicant that her request for an exemption was inadmissible, in so far as it was not substantiated by the required evidence.

3 On 9 and 13 March 2020, the applicant submitted her observations in response to the letter of 30 January 2020.

4 On 30 September 2020, the Executive Director of EUIPO refused the request for an exemption from the nationality condition submitted by the applicant ('the contested decision').

Procedure and forms of order sought

5 By application signed by a lawyer from the law firm Brandstock Legal and lodged at the Court Registry on 7 December 2020, the applicant brought the present action.

6 The Court, by way of measures of organisation of procedure provided for in Article 89 of the Rules of Procedure of the General Court, requested the applicant to indicate any employment relationship that she might have with her lawyer. The applicant replied to that request on 20 January 2021.

7 EUIPO lodged its defence on 21 April 2021.

8 On 7 June 2021, the applicant lodged her reply, and on 23 July 2021, EUIPO lodged its rejoinder.

9 By decision of 21 September 2021, pursuant to Article 27(3) of the Rules of Procedure, the President of the General Court reallocated the present case to another Judge-Rapporteur, in order to optimise the Court's capacity to give judgment and thus in the interests of the proper administration of justice.

10 On a proposal from the Fourth Chamber of the General Court, the latter decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a Chamber sitting in extended composition.

11 The applicant claims that the Court should:

– annul the contested decision;

– alter the contested decision by granting her an exemption from the nationality condition on the basis of Article 120(4)(b) of Regulation 2017/1001;

– alter the contested decision by ordering EUIPO to include her on the list of professional representatives pursuant to Article 120 of Regulation 2017/1001;

– order EUIPO to pay the costs.

12 EUIPO contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

13 Without raising a plea of inadmissibility by separate document on the basis of Article 130(1) of the Rules of Procedure, EUIPO contends that the action is inadmissible.

14 EUIPO submits that, under the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, a party is not authorised to act himself or herself but must use the services of a lawyer and that it follows from the case-law that a lawyer within the meaning of that provision is a third party who is structurally, hierarchically and functionally independent of the party whom he or she represents in legal proceedings. The lawyer who brought the action on behalf of the applicant was, on the date on which the action was brought, a lawyer in the same law firm as the applicant, performed duties as the applicant's supervisor and, therefore, did not satisfy the condition of being an independent third party. The action is therefore vitiated by a defect which is not capable of being rectified and, as such, is inadmissible.

15 Under Article 129 of the Rules of Procedure, on a proposal from the Judge-Rapporteur, the General Court may at any time of its own motion, after hearing the parties, decide to rule by reasoned order on whether there exists any absolute bar to proceeding with a case. In the present case, the Court, finding that it has sufficient information from the documents in the file, has decided to rule by reasoned order without taking further steps in the proceedings.

16 It should be noted that the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, which applies to the General Court by virtue of the first paragraph of Article 53 of that statute, provides that parties, other than the Member States and the institutions of the European Union, the States which are parties to the EEA Agreement, and the Surveillance Authority of the European Free Trade Association, referred to in that agreement, must be represented by a lawyer. The fourth paragraph states that only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement may represent or assist a party before the EU Courts.

17 As regards the concept of a lawyer, it must be noted that, as there is no reference in the third paragraph of Article 19 of the Statute of the Court of Justice to the national law of the Member States, that concept must be given an autonomous and uniform interpretation throughout the European Union, taking into account not only the wording of that provision, but also its context and purpose (see judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 57 and the case-law cited).

18 According to settled case-law, it follows from the wording of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union that, for the purposes of bringing an action before the General Court, a party, as referred to in that provision, must use the services of a third party (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 58 and the case-law cited).

19 The objective of the requirement of legal representation by a third party corresponds to the conception of the role of the lawyer, who acts in the interests of the sound administration of justice and, above all, to protect and defend the principal's interests to the greatest possible extent, acting in full independence and in line with the law and professional rules and codes of conduct (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 61 and 62 and the case-law cited).

20 The issue of a lawyer's independence must also be assessed in relation to the right of every person to an effective remedy before a court and the right to be advised, defended and represented before that court, as guaranteed by the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union (see, to that effect, Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, points 78 and 104). In that regard, account must be taken of the fact that legal representation requires a relationship of trust based on a private choice of a contractual nature, the individual being free to choose his or her lawyer, who is free, in principle, to choose his or her clients (see, to that effect, Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, point 111).

21 In view, therefore, of the lawyer's role in the effective judicial protection of his or her principal's interests (see paragraph 19 above) and in view of Article 47 of the Charter of Fundamental Rights, any intervention in the relationship between that lawyer and his or her client must be based on serious reasons which reveal a clear and imperative need to 'protect the applicant from his or her lawyer' (Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, point 111). Consequently, as the Court of Justice has held, the lawyer's independence is to be understood not as the lack of any connection whatsoever between the lawyer and his or her client, but the lack of connections which have a manifestly detrimental effect on his or her capacity to carry out the task of defending his or her client while acting in that client's interests to the greatest possible extent (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 64 and 67).

22 In the light of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, the case-law based on that article and Article 47 of the Charter of Fundamental Rights, since the possibility for the EU Courts to dismiss applications as inadmissible is thus limited solely to cases where lawyers manifestly lack independence, it follows, *a contrario*, that the competence to resolve all other difficulties resulting from conflicts or confusions of interests

belongs, in principle, to the national authorities which have powers in that regard, in particular the authorities which have powers in relation to codes of conduct or disciplinary matters, and that the EU Courts must intervene only in exceptional cases.

23 In accordance with settled case-law, exceptions are to be interpreted strictly so that general rules are not negated (see judgment of 22 April 2010, *Commission* v *United Kingdom*, C-346/08, EU:C:2010:213, paragraph 39 and the case-law cited).

24 It follows that the situations which are capable of preventing the lawyer from representing his or her principal must be of such a nature and degree as to make it obvious that the lawyer, although formally a third party vis-à-vis the applicant, has economic or personal ties, either with the dispute or with one of the parties, that call into question his or her genuine independence (Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, point 137). In other words, those links must constitute serious grounds for finding that the lawyer is not sufficiently distant to be able to protect and defend the interests of his or her client to the greatest possible extent (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 61 and 62).

25 In that regard, in order to be sure that the lawyer is genuinely acting as an independent third party, account must be taken of the professional environment in which he or she works when the case is brought before the EU Courts (see, to that effect, judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej and Poland* v *Commission*, C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 25).

26 Thus, the representation of the applicant by a person who is his or her employee or who is financially dependent on the applicant cannot satisfy the requirement of representation by an independent third party (order of 5 September 2013, *ClientEarth* v *Council*, C-573/11 P, not published, EU:C:2013:564, paragraph 13).

27 However, a failure to comply with the requirement for a lawyer to be independent may be established in a wide variety of other factual situations which must, therefore, be examined on a case-by-case basis (see, to that effect, order of 20 November 2017, *BikeWorld* v *Commission*, T-702/15, EU:T:2017:834, paragraph 35, and Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, point 64).

28 Accordingly, it is true that the Court of Justice has held that the mere link resulting from a civil law contract for the provision of a lecturing service was insufficient to deny the lecturer in question the capacity to represent his university as a lawyer (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 66 to 68). However, the dispute in that case concerned the termination of an agreement between the applicant university and the Research Executive Agency (REA) concerning the grant for a Cossar (Cooperative Spectrum Sensing Algorithms for Cognitive Radio Networks) research project which did not in any way concern the professional background of its representative, which was merely to teach private international law. In other words, the dispute had no connection with the lawyer's work for his principal.

29 Illustrating the range of situations to be taken into consideration, the Court of Justice has considered, however, that a lawyer with extensive administrative powers within the legal person that he or she represents or who holds senior managerial duties there is not sufficiently independent of that legal person (see, to that effect, orders of 29 September 2010, *EREF* v *Commission*, C-74/10 P and C-75/10 P, not published, EU:C:2010:557, paragraphs 50 and 51, and of 6 April 2017, *PITEE* v *Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 25).

30 Similarly, the General Court has held that the holding of 10% of the share capital in the applicant company prevented the lawyer from satisfying the condition of being an independent third party vis-à-vis that company (order of 20 November 2017, *BikeWorld* v *Commission*, T-702/15, EU:T:2017:834, paragraphs 37, 38, 40 and 41; Opinion of Advocate General Bobek in Joined Cases *Uniwersytet Wrocławski and Poland* v *REA*, C-515/17 P and C-561/17 P, EU:C:2019:774, point 43), even in the absence of any relationship of subordination arising from a contract of employment between them.

31 Further still, the Court of Justice has held that lawyers employed not by the party they represented, but by an entity connected to it, did not meet the requirement of independence in so far as, even though those two entities were formally separate, their interests were largely the same (judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej and Poland* v *Commission*, C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 25).

32 In the present case, it is apparent from the file that, on the date on which the application was lodged, the applicant held the position of lawyer in the law firm Brandstock Legal and that Ms Parassina, the lawyer who signed the application, was a lawyer in the same firm. More specifically, the applicant was even part of the team managed by Ms Parassina and was her assistant.

33 It follows that the applicant and her lawyer had a particularly close professional relationship.

34 Thus, the assertions to the contrary made by the applicant in her replies to the measure of organisation of procedure referred to in paragraph 6 above, that is to say after her attention was drawn to the problem that could be caused by her legal representation, to the effect that there is no structural or functional dependence between her and her lawyer, their relationship being horizontal rather than vertical, and that they are even part of two different organisational structures, cannot be accepted.

35 In addition, the links between the applicant and Ms Parassina were particularly close since the present dispute directly concerns the applicant's profession which, on the date on which the action was lodged, she practised in the same firm as Ms Parassina and under the latter's management. The subject matter of the action is the refusal to grant the applicant an exemption, without which she cannot obtain authorisation to represent natural or legal persons before EUIPO. Her work at Brandstock Legal and within the team led by Ms Parassina consisted precisely in dealing with intellectual property cases.

36 It must also be noted, in that regard, that the applicant submitted her request for inclusion on the list of professional representatives before EUIPO and her request for an exemption from the nationality condition by using her employer's fax machine and that, although she indicated private postal and email addresses in those two requests, she also stated her professional email address. It was also by using the same fax machine that, on 9 and 13 March 2020, the applicant submitted her observations in response to the letter of 30 January 2020.

37 It is also apparent from the documents in the file and from the pleadings that Brandstock Legal, in general, and Ms Parassina, in particular, repeatedly stated their interest in the request made by the applicant to EUIPO and in the outcome of the case.

38 First, a letter of recommendation dated 6 March 2020, signed by the applicant's lawyer under the heading and on behalf of Brandstock Legal, was drawn up for the purposes of the proceedings before EUIPO, in support of the request for review of 9 March 2020, and was annexed to that request. In that letter, the applicant's lawyer emphasised the significant contribution that the applicant made to the firm's work and ended the letter by stating that 'we would highly appreciate if [she] is recognised as European Trademark Attorney' by EUIPO.

39 Secondly, as EUIPO observes, the application states that Brandstock Legal, which, according to the applicant, deals exclusively with trade marks and intellectual property matters, 'bears all the costs related to [her] enrolment to the Irish [Trade Marks] Registry because it is also in the interest of the [firm] that the Applicant's formal qualification correctly reflects the content of her work'.

40 Thirdly, the application states that 'the Applicant is represented by Ms. Parassina herself, due to the fact that as her supervisor, she know[s] better than anyone else that the Applicant is highly qualified'. In order to illustrate those remarks, the application states that 'for different tenders to win new clients, [the] Brandstock [Legal] team provides so-called "organigrams" with the team to work on the portfolio, in which the Applicant is presented as one of the most senior and experienced members of the Team to promote the [firm]'.

41 Fourthly, the application states that 'given the demands, big portfolio and importance of [a client] to Brandstock Legal, the Applicant was assigned to this specific [client] portfolio because she is one of the best and most knowledgeable employees of the Company'.

42 Fifthly, the application expressly states that 'the entry of the Applicant to the list of the Professional Representative of the EUIPO is … important for the [firm] and the team', with the result that 'the appealed Decision is causing a damage not only to the Applicant but also [to the firm]'.

43 First, it is clear from those elements that the firm Brandstock Legal, in which Ms Parassina managed a department, had, on the date on which the action was lodged, a direct interest in the outcome of the case. Secondly, it is also apparent from those elements that no credit can be given to the applicant's assertions, set out in the reply, that Ms Parassina represents her only as a friend and that Brandstock Legal has no particular interest in the applicant being registered as a trade mark agent.

44 It is true that the applicant claims that she did not need to be included on the list of professional representatives before EUIPO in order to retain her employment.

45 The fact remains, however, that, in the light of, first, the professional environment of the present case, namely the close links between the applicant, her representative and Brandstock Legal, and, secondly, the deep and clear convergence of the protagonists' economic interests, Ms Parassina was clearly not, on the date on which the action was brought, sufficiently distant to protect and defend her client's interests to the greatest possible extent and was therefore in a situation that manifestly had a detrimental effect on her capacity to carry out that task (see paragraphs 19, 21 and 24 above).

46 Accordingly, it must be held that Ms Parassina could not be regarded as an independent third party and, therefore, could not present herself as an independent third party 'lawyer', within the meaning of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union.

47 Furthermore, it is true that the particular link between Brandstock Legal and Ms Parassina, on the one hand, and the applicant, on the other, which gave rise to the specific interest of Brandstock Legal and Ms Parassina in the dispute was broken, after the action was brought, because the applicant chose to pursue her career as a trade mark attorney at the German head office of an international company, and it is also true that the applicant is now assisted by a second lawyer who does not work for the firm Brandstock Legal. However, it must be noted, first, that the question as to whether an action is admissible must be assessed by reference to the situation prevailing when the application was lodged (see order of 16 January 2020, *Hemp Foods Australia* v *EUIPO – Cabrejos (Sativa)*, T-128/19, not published, EU:T:2020:3, paragraph 20 and the case-law cited) and, secondly, that the requirement of signature by a lawyer authorised to practise before a court or tribunal of a Member State or another State which is a party to the EEA Agreement is an essential procedural condition which, under Article 78(6) of the Rules of Procedure, is not one of the requirements which can be rectified, after expiry of the time limit for bringing an action (see, by analogy, orders of 5 September 2013, *ClientEarth* v *Council*, C-573/11 P, not published, EU:C:2013:564, paragraphs 22 and 23, and of 17 July 2014, *Brown Brothers Harriman* v *OHIM*, C-101/14 P, not published, EU:C:2014:2115, paragraph 21).

48 In the light of all the foregoing, the action must be dismissed as inadmissible.

Costs

49 Under Article 134(1) 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.

50 In the present case, since the applicant has been unsuccessful, she must be ordered to bear her own costs and to pay those incurred by EUIPO, in accordance with the form of order sought by EUIPO.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby orders:

1. The action is dismissed as inadmissible.

2. Ms Nigar Kirimova is ordered to bear her own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).

Luxembourg, 9 March 2022.

E. Coulon
Registrar

S. Gervasoni
President