Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

6 September 2012*

(Appeals — Actions for annulment — Rejection of the appeal as inadmissible — Representation before the Courts of the European Union — Lawyer — Independence)

In Joined Cases C-422/11 P and C-423/11 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 5 August 2011,

Prezes Urzędu Komunikacji Elektronicznej, established in Warsaw (Poland), represented by D. Dziedzic-Chojnacka and D. Pawłowska, radcowie prawni,

Republic of Poland, represented by M. Szpunar, A. Kraińska and D. Lutostańska, acting as Agents,

appellants,

the other party to the proceedings being:

European Commission, represented by G. Braun and A. Stobiecka-Kuik, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Eighth Chamber),

composed of A. Prechal, President of the Chamber, K. Schiemann (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: V. Trstenjak,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 4 June 2012,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeals, the Prezes Urzędu Komunikacji Elektronicznej (Chairman of Electronic Communications Office) and the Republic of Poland seek the annulment of the order in Case T-226/10 *Prezes Urzędu Komunikacji Elektronicznej* v *Commission* [2011] ECR II-2467 ('the contested order'), by which the Court dismissed as inadmissible the action for the annulment of Commission

* Language of the case: Polish.

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 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

Legal context

European Union law

2 Pursuant to the first, third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, which applies 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 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.'

3 The Polish language version of Article 19 refers to 'a lawyer or legal adviser ['radca prawny']'instead of 'a lawyer'.

4 Article 113 of the Rules of Procedure of the General Court provides:

'The General Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action or declare that the action has become devoid of purpose and that there is no need to adjudicate on it …'

Polish law

5 In addition to the profession of lawyer, Polish law recognises the profession of legal adviser. Legal advisers may request admission to the Bar and thus be duly authorised to represent their clients or employers before the Polish courts.

6 The professional body of legal advisers was established pursuant to Article 17(1) of the Constitution of the Republic of Poland. The profession of legal adviser is governed by the Law on legal advisers of 6 July 1982, and the members are bound by the Code of Ethics for Legal Advisers (Kodeks Etyki Radcy Prawnego). Those texts contain several provisions specifically governing the rules for the provision of legal assistance by legal advisers and are intended to ensure that legal advisers can exercise their profession in complete independence whether or not they act under a contract of employment with the party whom they are advising.

7 Under Article 193(1) of the Law on telecommunications (Ustawa z dnia Prawo telekomunikacyjne) of 16 July 2004 (Dz. U n°171, position 1800), in the version applicable to the facts of the present dispute, the Chairman exercises his functions through the intermediary of the Urzędu Komunikacji Elektronicznej (Electronic Communications Office ('the UKE')).

8 In accordance with Article 25(4)(1) and (2) of the Law on the civil service (ustawa z dnia o służbie cywilnej) of 21 November 2008 (Dz. U n° 227, position 1505), in the version applicable to the facts of the present dispute, it is the responsibility of the Director General of the UKE, and not its Chairman,

to ensure the functioning and the continuity of the work of that Office, the conditions for the performance of its activities and the organisation of its work. It is also the responsibility of the Director General of the UKE, and not its Chairman, to handle staff management and to deal with labour law issues with regard to the staff of that Office.

The action before the General Court and the contested order

9 By application lodged at the Registry of the General Court on 14 May 2010, the Chairman of the UKE brought an action for annulment of the decision referred to in paragraph 1 of the present judgment.

10 The action was brought before the General Court by Ms H. Gruszecka and Ms D. Pawłowska, legal advisers ('radcowie prawni').

11 In the context of a measure of organisation of procedure, the General Court asked the Chairman of the UKE to clarify whether the legal advisers who signed the application on its behalf were, at time of bringing proceedings, bound to it by a relationship of employment.

12 In reply to that request, the Chairman of the UKE stated that Ms H. Gruszecka and Ms D. Pawłowska were bound by a relationship of employment to the UKE, and not to the Chairman of the UKE. Furthermore, the Chairman of the UKE stated, firstly, that under Polish legislation, it is the Director General of the UKE, and not its Chairman, who is competent as regards the establishment, the duration and the continuance of the relationship of employment with those legal advisers; secondly, that the legal advisers fall within a category of independent posts which are directly answerable to the Director General of the UKE; and thirdly, that pursuant to the Polish legislation concerning legal advisers, a legal adviser practising his profession within the framework of a relationship of employment holds an autonomous position which is under the direct authority of the director of the organisational entity.

13 The General Court then examined the admissibility of the application in the light of the provisions of the Statute of the Court of Justice relating to the requirements for representation of the parties before it and it held as follows in paragraphs 16 to 23 of the contested order:

> '16 According to settled case-law, it is apparent … 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).
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> 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 15).
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> 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 adviser is not enough in itself to demonstrate that Ms Gruszecka and Ms Pawłowska were entitled to represent the applicant before the General 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, Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others* [2010] ECR I-8301, paragraphs 44 and 45, and the order in Joined Cases C-74/10 P and C-75/10 P *EREF* v *Commission*, 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 the UKE determines "[their] recruitment, [their] working conditions and the termination of [their] employment relationship".

20 Finally, again according to the applicant, the 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 the UKE and the UKE and even if there is no formal employment relationship between the applicant and its legal advisers, 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 the 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 practising 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 adviser. 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).

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

14 In the light of those considerations, the General Court concluded that the application initiating proceedings, in so far as it had been signed only by Ms Gruszecka and Ms Pawłowska, was not submitted in conformity with the third and fourth paragraphs of Article 19 and the first paragraph of Article 21 of the Statute of the Court of Justice and the first subparagraph of Article 43(1) the Rules of Procedure of the General Court and that, therefore, the application was inadmissible.

Forms of order sought and procedure before the Court

15 The Chairman of the UKE contends that the Court should:

— set aside the contested order and refer the case back to the General Court for reconsideration, and

— order the Commission to pay the costs.

16 The Republic of Poland claims that the Court should set aside the contested order.

17 The Commission contends that the Court should:

— dismiss the appeals, and

— order the appellants to pay the costs.

18 By order of the President of the Court of 8 December 2011, Cases C-422/11 P and C-423/11 P were joined for the purposes of the oral procedure and of the judgment.

19 By orders of 16 April 2012, the President of the Court dismissed the applications of the Krajowa Izba Radców Prawnych (National Chamber of Legal Advisers) and of the European Company Lawyers Association (ECLA), lodged at the Registry of the General Court on 29 November 2011, and that of the Law Society of England and Wales, lodged at the Registry of the General Court on 2 December 2011, seeking leave to intervene in support of the forms of order sought by the Chairman of the UKE and the Republic of Poland.

The appeals

20 There is no need to examine the admissibility of the appeal lodged by the Chairman of the UKE in the light of Article 19 of the Statute of the Court of Justice since the legal question of admissibility under that article is precisely the subject-matter of the appeal. It should be noted that he raises five pleas in support of his appeal, the first, second, fourth and fifth of which correspond respectively to the two limbs of the first plea and to the second and third pleas put forward by the Republic of Poland in support of its own appeal.

The first plea of the Chairman of the UKE and the first limb of the first plea of the Republic of Poland alleging incorrect interpretation of Article 19 of the Statute of the Court of Justice

21 The appellants complain that the Court misinterpreted Article 19 of the Statute of the Court, in so far as it considered that that provision requires the adviser representing a party before the Courts of the European Union to enjoy, in respect of that contracting party, a degree of independence, which was lacking in the legal advisers who brought the proceedings before the General Court.

22 They claim in that regard that the two legal advisers at issue were bound by an employment relationship to the UKE and not to its Chairman. Furthermore, within the UKE, they report directly to the Director General, who is solely responsible for the operation of that Office and, in particular, staff management. In any event, the regulatory framework governing the practice of the profession of legal adviser ensures the complete independence of their legal work, even in respect of their employer.

23 In that regard, it should be noted, as the General Court correctly held at paragraph 17 of the contested order, that the conception of the lawyer's role in the legal order of the European Union, which is derived from the legal traditions common to the Member States, and on which Article 19 of the Statute of the Court of Justice is based, is that of collaborating in the administration of justice and of being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs (see, to that effect, Case 155/79 *AM & S Europe* v *Commission* [1982] ECR 1575, paragraph 24; *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, paragraph 42; and *EREF* v *Commission*, paragraph 52).

24 The requirement of independence of a lawyer implies that there must be no employment relationship between the lawyer and his client (see *EREF* v *Commission*, paragraph 53 and the case-law cited). As the General Court correctly held at paragraph 18 of the contested order, 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 (*Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*, paragraph 45).

25 That reasoning applies with the same force in a situation such as that of the legal advisers in issue in the present dispute, in which the lawyers are employed by an entity connected to the party they represent. The relationship of employment between the legal advisers and the UKE, even if it is formally separate from the Chairman of the UKE, is liable to affect their independence since the interests of the UKE are largely the same as those of its Chairman. There is a risk that the professional opinion of those advisers would be, at least partly, influenced by their working environment.

26 Furthermore, for the reasons given in paragraph 24 of the present judgment, the appellants' arguments seeking to establish that a lawyer who is employed by a client whom he represents acts with the same degree of independence in respect of his client as a lawyer in private practice are irrelevant in the present case.

27 Finally, the Republic of Poland's argument concerning the alleged practical difficulties which the requirement to use the services of a lawyer involves must be rejected. It is not only public authorities, such as the UKE, which are exposed to additional costs because of the obligation to enlist the services of an external lawyer, but this is also the case for any private individual. Furthermore, it has not in any way been shown that the problems regarding access to confidential information within public authorities or relating to provisions of public procurement law constitute a significant obstacle to the representation of public authorities before the Courts of the European Union.

28 In the light of those considerations, the first plea advanced by the Chairman of the UKE and the first limb of the first plea advanced by the Republic of Poland in support of their appeals must be dismissed as unfounded.

The second plea of the Chairman of the UKE and the second limb of the first plea of the Republic of Poland alleging non-respect of the particular features and the independence of the profession of legal adviser in Poland

29 The appellants submit that the fourth paragraph of Article 19 of the Statute of the Court refers to national law and that the interpretation of that statute cannot therefore ignore national legislation, contrary to what is suggested by the General Court at paragraph 22 of the contested order. It is national law in particular, and in the present case Polish law, which defines the right of lawyers to act before national courts and, therefore, before the Courts of the European Union.

30 The Chairman of the UKE refers to the case-law under which, in the absence of specific EU rules in the field, each Member State is free to regulate the exercise of the profession of lawyer in its territory and, therefore, the rules applicable to that profession may differ substantially from one Member State to another.

31 The appellants observe, in that context, that the provisions of secondary EU law on recognition of professional qualifications of lawyers make no distinction concerning the right of lawyers to represent a client in the context of judicial proceedings based on whether or not they act pursuant to a relationship of employment with the party on whose behalf they act. They only provide for an option for the Member States to establish such a distinction if their national law prohibits lawyers bound by an employment relationship from representing their employer before the courts.

32 Where national legislation guarantees to a lawyer his independence to such an extent as to enable him to represent his employer before the national courts, there is therefore, according to the appellants, no justification for refusing him the right to represent parties before the Courts of the European Union. The Polish legal and deontological framework makes no distinction between legal advisers based on whether or not they act pursuant to a relationship of employment with the party on whose behalf they act and it sufficiently guarantees their independence. According to the Republic of Poland, the distinction made in the contested order results in discrimination against one of the forms of supply of legal advisory services and against those who use it.

33 In that regard, it should be noted at the outset that the fourth paragraph of Article 19 of the Statute of the Court, by providing that only a lawyer entitled to practise before a court of a Member State may represent a party before the Court, imposes a necessary condition to be satisfied by every lawyer acting on behalf of a party other than a Member State or an institution of the European Union before the Courts of the European Union. That condition cannot however be interpreted as constituting a sufficient condition, in the sense that every lawyer entitled to practise before a court of a Member State is automatically allowed to act before the Courts of the European Union.

34 Although, as noted in paragraph 23 of the present judgment, the conception of the lawyer's role in the legal order of the European Union derives from the legal traditions common to the Member States, in the context of disputes brought before the Courts of the European Union, that conception is implemented objectively and is necessarily independent from the national legal orders.

35 Therefore, the General Court was correct in finding, at paragraph 22 of the contested order, that the provisions concerning the representation of non-privileged parties before the Courts of the European Union must be interpreted, as far as possible, independently and without reference to national law

36 For the same reasons, Article 67(1) TFEU, put forward by the Chairman of the UKE in order to support a claim of infringement of respect for the different legal systems and traditions of the Member States, is irrelevant in this context, since Article 19 of the Statute of the Court, relevant in the present case, governs the representation of parties not before national courts but before the Courts of the European Union.

37 Consequently, the second plea raised by the Chairman of the UKE and the second limb of the first plea raised by the Republic of Poland in support of their appeals must be rejected as unfounded.

The third plea of the Chairman of the UKE alleging breach of the principle of conferred powers and of the principle of subsidiarity

38 The Chairman of the UKE pleads breach of the principle of conferred powers under Article 5(1) and (2) TEU, read in conjunction with Article 4(1) TEU. He claims that, by limiting the application of the third paragraph of Article 19 of the Statute of the Court to lawyers who are not acting on the basis of a contract of employment, the General Court encroached upon the powers of the Member States to determine whether an individual is qualified as a lawyer and it therefore breached the principle of conferred powers. The object of EU law cannot be to determine what conditions must be fulfilled to pursue the profession of lawyer.

39 The Chairman of the UKE also claims that the contested order breaches the principle of subsidiarity because there is nothing to justify the assertion that it is impossible to achieve the objective of independence of lawyers or legal advisers at national level.

40 In that respect, it is sufficient to point out that the present appeals concern not the organisation of the exercise of the profession of lawyer within the territory of a Member State, but the representation of parties before the Courts of the European Union, as provided for in the Statute of the Court. Moreover, the interpretation of the notion of 'lawyer' in the context of Article 19 of that statute does not affect the representation of the parties before the courts of a Member State and cannot therefore breach either the principle of conferred powers or the principle of subsidiarity.

41 Consequently, the third plea raised by the Chairman of the UKE in support of his appeal must be rejected as unfounded.

The fourth plea of the Chairman of the UKE and the second plea of the Republic of Poland alleging breach of the principle of proportionality

42 The appellants claim that the interpretation of the third and fourth paragraphs of Article 19 of the Statute of the Court, according to which legal advisers bound by a relationship of employment with a party cannot represent that party before the Courts of the European Union, is not justified by the need to protect the administration of justice within the European Union or to ensure that the parties benefit from the services provided by independent legal counsel. Such an interpretation thus breaches the principle of proportionality, enshrined in Article 5(4) TEU.

43 They argue that there are less restrictive material and formal measures that enable the same objective of independence of the representative of the party in proceedings before the Courts of the European Union without it being necessary to exclude, as a whole, the professional category of legal advisers practising their profession on the basis of a contract of employment. Such measures have been established in Poland by the various legislative and deontological provisions governing the exercise of the profession of legal adviser.

44 In this regard, it must be noted that, in any event, it does not appear that the material and formal measures to which the appellants refer ensure the independence of a lawyer as thoroughly as the absence of any employment relationship between him and his client.

45 Therefore, the fourth plea raised by the Chairman of the UKE and the second plea raised by the Republic of Poland in support of their appeals must be rejected as unfounded.

The fifth plea of the Chairman of the UKE and the third plea of the Republic of Poland alleging failure to state adequate reasons for the contested order

46 The appellants draw attention to the settled case law under which it is incumbent upon the General Court to state reasons for its judgments clearly and precisely, thus enabling the persons concerned to know why the measures in question were taken and providing the Court of Justice with sufficient material for it to exercise its powers of review.

47 They consider that, in the present case, the General Court did not sufficiently refer to the explanations provided by the Chairman of the UKE concerning relations between him and the legal advisers representing him. Similarly, the arguments relating to the independence of the legal advisers were entirely ignored by the General Court at point 22 of the contested order. The General Court cannot correctly adopt that order without first carrying out an in-depth analysis of the provisions of national law regulating the exercise of the profession of legal adviser.

48 In that regard, it should be recalled that the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case and that the reasoning may therefore be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 96 and the case-law cited).

49 As stated in paragraph 35 of the present judgment, the General Court correctly found, at paragraph 22 of the contested order, that the provisions concerning the representation of non-privileged parties before the Courts of the European Union must be interpreted, as far as possible, independently and without reference to national law. Therefore, the General Court was in no way obliged to analyse the specific form of employment of legal advisers in Poland, nor the different levels of independence they enjoy, nor the provisions of national law regulating their activities.

50 Consequently, the fifth plea raised by the Chairman of the UKE and the third plea raised by the Republic of Poland in support of their appeals must be rejected as unfounded.

51 Since none of the pleas raised by the appellants in support of their appeals has been successful, those appeals must be dismissed.

Costs

52 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 thereof, 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 Commission has applied for costs and the appellants have been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Eighth Chamber) hereby:

1. Dismisses the appeals;

2. Orders the Prezes Urzędu Komunikacji Elektronicznej and the Republic of Poland to pay the costs.

[Signatures]