Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 May 2017*

(Reference for a preliminary ruling — Freedom to provide services — Directive 77/249/EEC — Article 4 — Practice of the legal profession — Router for accessing the private virtual network for lawyers (RPVA) — Router for RPVA access — Refusal to issue to a lawyer registered at a Bar of another Member State — Discriminatory measure)

In Case C-99/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de grande instance de Lyon (France), made by decision of 15 February 2016, received at the Court on 19 February 2016, in the proceedings

Jean-Philippe Lahorgue

v

Ordre des avocats du barreau de Lyon,

Conseil national des barreaux (CNB),

Conseil des barreaux européens (CCBE),

Ordre des avocats du barreau de Luxembourg,

intervening party:

Ministère public,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: M. Wathelet,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 11 January 2017,

after considering the observations submitted on behalf of:

— J.-P. Lahorgue, representing himself, avocat,

* Language of the case: French.

— the Ordre des avocats du barreau de Lyon, by S. Bracq, avocat,

— the Conseil national des barreaux (CNB), initially by M. Benichou, avocat, and subsequently by J.-P. Hordies, M. Benichou and A.-G. Haie, avocats,

— the French Government, by D. Colas and R. Coesme, acting as Agents,

— the European Commission, by H. Støvlbæk and H. Tserepa-Lacombe, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 February 2017,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the interpretation of Article 4 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).

2 The request has been made in interlocutory proceedings issued by Mr Jean-Philippe Lahorgue against the Ordre des avocats du barreau de Lyon (France) (Lyon Bar Association), the Conseil national des barreaux (National Bar Council) (CNB, France), the Conseil des barreaux européens (Council of European Bars and Law Societies) (CCBE) and the Ordre des avocats du barreau de Luxembourg (Luxembourg Bar Association), seeking an order requiring the Lyon Bar Association to issue to Mr Lahorgue, as a provider of cross-border services, the router for accessing the réseau privé virtuel des avocats (Private Virtual Network for Lawyers; RPVA) ('the router for RPVA access').

Legal context

EU law

3 Article 4 of Directive 77/249 provides:

'1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organisation, in that State.

2. A lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.

…'

4 Article 5 of that directive provides:

'For the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require lawyers to whom Article 1 applies:

— to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State;

— to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority, or with an "avoué" or "procuratore" practising before it.'

5 Article 7(1) of Directive 77/249 states that the competent authority of the host Member State may request the person providing the services to establish his qualifications as a lawyer.

French law

6 With regard, in particular, to lawyers who are nationals of the Member States of the European Union and are established on a permanent basis in one of those Member States, Article 202-1 of Decree No 91-1197 of 27 November 1991 organising the profession of lawyer provides as follows:

'If [such] a lawyer represents or defends a client in legal proceedings or before public authorities, he shall perform his duties under the same conditions as a lawyer registered at a French Bar.

…

In civil cases, if representation before the tribunal de grande instance [Regional Court] is mandatory, he may accept instruction only after electing an address for service at the office of a lawyer established under the court to which the matter has been referred and to which the procedural documents are properly notified. …'

7 Article 748-1 of the Code of Civil Procedure states that 'dispatches, deliveries and notifications of pleadings, documents, notices, warnings or summonses, of reports, of minutes and of copies and execution copies of judicial decisions may be effected by electronic means under the conditions and according to the procedure laid down by this title, without prejudice to the special provisions requiring the use of this kind of communication'.

8 With regard to appeal proceedings, Article 930-1 of the Code of Civil Procedure provides as follows:

'Procedural documents shall be submitted to the court by electronic means, failing which they shall be declared inadmissible by the court of its own motion.

If the document cannot be submitted by electronic means for a reason beyond the control of the person responsible for it, it shall be drawn up on paper and lodged at the registry. In that case, the notice of appeal shall be lodged at the registry …

Notices, warnings or summonses shall be sent to the lawyers of the parties by electronic means, unless this is impossible for a reason beyond the control of the sender.

An order of the Keeper of the Seals shall lay down the procedure for electronic exchanges.'

9 Article 5 of the Decree of 7 April 2009 on electronic communication before the regional courts states that 'access for lawyers to the electronic communication system provided to the courts is acquired by connecting to a private independent network operated under the responsibility of the Conseil national des barreaux [CNB] called the [RPVA]'.

10 Article 9 of that decree states that 'the security of the lawyers' connection to the RPVA is guaranteed by an identification mechanism. This mechanism is based on a certification service which shall ensure authentication as an individual lawyer … The mechanism shall include a function for verifying the validity of the electronic certificate. This shall be issued by a provider of electronic certification services acting on behalf of the Conseil national des barreaux, the certification authority'.

11 In practice, authentication is made possible because the lawyer's personal electronic certificate is linked to the national register of lawyers, which is automatically updated by means of a daily synchronisation with the registers of the lawyers of all French Bar associations.

The dispute in the main proceedings and the question referred for a preliminary ruling

12 Mr Lahorgue, who is of French nationality, is a lawyer registered at the Luxembourg Bar.

13 Mr Lahorgue requested a router for RPVA access from the Lyon Bar Association in order to facilitate his practice as a lawyer providing cross-border services.

14 The Lyon Bar Association did not grant Mr Lahorgue's request on the basis that he was not registered at the Lyon Bar.

15 Consequently, Mr Lahorgue summoned, inter alia, the Lyon Bar Association to appear before the tribunal de grande instance de Lyon (Regional Court, Lyon, France) in proceedings for interim measures, seeking an order requiring the Lyon Bar Association to issue to him, within one week and on pain of a penalty, a router for RPVA access to enable him fully to carry out the profession of a lawyer in France and under the same conditions as a French lawyer.

16 In the context of those proceedings for interim measures, Mr Lahorgue suggested that, if appropriate, the Court of Justice should be asked to answer the question of whether the refusal to issue a router for RPVA access to a lawyer duly registered with a Bar of a Member State, for the sole reason that the lawyer is not registered with a Bar of the other Member State in which he wishes to practise his profession as a free provider of services, is contrary to Article 4 of Directive 77/249, since that refusal constitutes a discriminatory measure which is liable to impede his practice of his profession as a free provider of services.

17 The referring court expresses doubts as to whether the decision of the Lyon Bar Association, by which it refused to issue a router for RPVA access, is compatible with EU law.

18 In particular, the referring court takes the view that, since the exercise of remedies in criminal or social matters does not entail any restriction for a lawyer of another Member State in terms of an obligation to work in conjunction with a lawyer belonging to the Bar for the district of the court concerned, it may appear inconsistent with the freedom to provide services to require a lawyer from another Member State to have recourse to another lawyer in the case where unimpeded access to the court by way of a router for RPVA access could grant him that freedom.

19 In those circumstances, the tribunal de grande instance de Lyon (Regional Court, Lyon) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the refusal to issue a router for RPVA access to a lawyer duly registered at the Bar of a Member State in which he wishes to practise his profession as a free provider of services contrary to Article 4 of Directive 77/249, on the basis that it constitutes a discriminatory measure which could impede the practice of his profession as a free provider of services in the case where working in conjunction with that local lawyer is not required by law?'

Consideration of the question referred

20 As the French Government and the Advocate General have correctly pointed out, the question as formulated by the referring court contains an affirmation which does not correspond to the situation of the applicant in the main proceedings, given that it envisages the situation of a lawyer 'registered at the Bar of a Member State in which he wishes to practise his profession as a free provider of services', which is not the case with regard to Mr Lahorgue.

21 In the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it and, to that end, the Court may have to reformulate the questions referred to it (judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 36).

22 Given that, in accordance with the Court's case-law, it is not for the Court, in the context of a request for a preliminary ruling under Article 267 TFEU, to give a ruling on the compatibility of provisions of national law with EU law (see, inter alia, judgment of 19 March 2015, *OTP Bank*, C-672/13, EU:C:2015:185, paragraph 29), it is consequently necessary to construe the question referred by the national court as asking, in essence, whether the refusal to issue a router for RPVA access, issued by the competent authorities of a Member State, to a lawyer duly registered at a Bar of another Member State, on the sole basis that that lawyer is not registered at a Bar of the first Member State in which he wishes to practise his profession as a free provider of services, constitutes a restriction on the freedom to provide services within the meaning of Article 4 of Directive 77/249 since that refusal constitutes a discriminatory measure liable to impede the practice of his profession as a free provider of services in situations where the obligation to work in conjunction with another lawyer is not imposed by law.

23 It is clear from the documents submitted to the Court that the use of electronic communication is authorised in certain proceedings, of which some are criminal or social matters, in which representation by a lawyer is not mandatory, namely the proceedings to which the request for a preliminary ruling refers. Access to that method of communication is limited to lawyers registered at a French Bar. At the time of the facts in the main proceedings, access to that method of communication was, in principle, limited to lawyers registered with the Bar within the district of the court concerned. For lawyers established in another Member State, communications by lodgement of documents at the registry or by post are the only authorised methods.

24 In this regard, it has to be borne in mind that all restrictions on the freedom to provide services must be abolished, pursuant to Article 56 TFEU, in order, in particular, to enable a person providing a service to pursue his activity in the State in which the service is provided under the same conditions as are imposed by that State on its own nationals, to use the wording of the third paragraph of Article 57 TFEU (see, to that effect, judgment of 10 July 1991, *Commission* v *France*, C-294/89, EU:C:1991:302, paragraph 25).

25 That latter provision has been clarified, in the area of the exercise by lawyers of the freedom to provide services, by Directive 77/249, Article 4(1) of which provides that the activity of representing a client in legal proceedings in another Member State must be pursued 'under the conditions laid down for lawyers established in that State', with the exception of 'any conditions requiring residence, or registration with a professional organisation, in that State' (see, to that effect, judgment of 11 December 2003, *AMOK*, C-289/02, EU:C:2003:669, paragraph 29).

26 Moreover, according to the settled case-law of the Court, Article 56 TFEU precludes the application of any national rules which, without objective justification, restrict the freedom of a service provider to provide services (see judgment of 14 January 2016, *Commission* v *Greece*, C-66/15, not published, EU:C:2016:5, paragraph 22 and the case-law cited). Restrictions on the freedom to provide services are

national measures which prohibit, impede or render less attractive the exercise of that freedom (see judgment of 14 January 2016, *Commission* v *Greece*, C-66/15, not published, EU:C:2016:5, paragraph 24 and the case-law cited).

27 In that regard, it must be noted that the refusal to issue a router for RPVA access to lawyers not registered at a French Bar is liable to hinder or make less attractive the exercise by those lawyers of the freedom to provide services.

28 Since they do not have access to the service of dematerialisation of proceedings, those lawyers are obliged to have recourse to either communication by lodgement of documents at the registry or by post, or the assistance of a lawyer registered at a French Bar who has a router for RPVA access. Those methods of communication, as alternatives to electronic communication, are more restrictive and, in principle, more onerous than electronic communication.

29 Accordingly, the refusal to issue a router for RPVA access to lawyers not registered at a French Bar constitutes a restriction on the freedom to provide services within the meaning of Article 56 TFEU.

30 However, account being taken of the particular nature of the services of persons who are not established in the Member State in which those services are to be provided, the requirement, with regard to lawyers, that the person concerned must already be duly registered at a local Bar in order to access the service of dematerialisation of proceedings cannot be considered contrary to Articles 56 TFEU and 57 TFEU, provided that that requirement is objectively necessary in order to protect the public interest linked, in particular, to the proper administration of justice (see, by analogy, judgment of 3 December 1974, *van Binsbergen*, 33/74, EU:C:1974:131, paragraphs 11, 12 and 14). That is the context in which Directive 77/249 has to be interpreted (see, by analogy, judgment of 25 February 1988, *Commission* v *Germany*, 427/85, EU:C:1988:98, paragraph 13).

31 Moreover, it is evident from well-established case-law of the Court that national measures which are liable to restrict or make less attractive the exercise of fundamental freedoms guaranteed by the FEU Treaty may nonetheless be permitted, provided that they serve overriding reasons in the public interest, are appropriate for attaining their objective and do not go beyond what is necessary in order to attain that objective (see, to that effect, judgments of 5 December 2006, *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 61, and of 11 December 2014, *Commission* v *Spain*, C-678/11, EU:C:2014:2434, paragraph 42), on the understanding that national legislation will be appropriate for ensuring attainment of the objective relied upon only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner (see judgment of 13 February 2014, *Sokoll-Seebacher*, C-367/12, EU:C:2014:68, paragraph 39 and the case-law cited).

32 In order to justify the restriction on the freedom to provide services, which stems from the refusal to issue a router for RPVA access to lawyers who are not registered at a French Bar, the CNB and the French Government invoke the principle of the proper administration of justice. According to the French Government, such a restriction is also justified on the basis of the protection of the ultimate recipient of legal services.

33 In France, it is submitted, every lawyer has an electronic certificate which is his own and which allows him to prove that he is a lawyer registered at a French Bar and is authorised to carry out his profession. The electronic certificate of each lawyer is linked to the national register of lawyers, which is automatically updated by means of a daily synchronisation with the registers of the lawyers of all French Bar associations. The electronic certificate of each lawyer is thus valid as long as the lawyer is registered in the national register of lawyers. By contrast, as soon as a lawyer is no longer enrolled on that register, for example because he has been removed from the Bar of which he was a member, his electronic certificate expires.

34 In that regard, it must be recalled that, first, the protection of consumers, in particular recipients of legal services provided by persons involved in the administration of justice and, second, the proper administration of justice are objectives which feature among those which may be regarded as overriding requirements in the public interest capable of justifying a restriction on the freedom to provide services (see, to that effect, judgment of 5 December 2006, *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 64).

35 As the Advocate General noted, in essence, in point 55 of his Opinion, the protection of the litigant as the ultimate consumer of legal services and the proper administration of justice are linked, in particular, to the requirements of supervision of the person providing the service.

36 The identification system on which the RPVA is based and which seeks to ensure that only lawyers who satisfy the conditions necessary for the exercise of their activity may connect to the RPVA appears, in itself, to be appropriate for attaining the objectives of the protection of both the recipients of legal services and the proper administration of justice.

37 As to the question of whether the refusal to issue a router for RPVA access to lawyers established in another Member State is proportionate, the French Government points out that that refusal can be explained by the fact that, in the current state of the arrangements for the dematerialisation of judicial proceedings, there is no interoperability between the registers of lawyers which may exist in different Member States. It follows that, during connection to the RPVA, the identification system can verify the validity of the electronic certificates only for lawyers who are registered at a French Bar.

38 It is for the referring court to determine whether, in the present case, it is possible to ensure that lawyers established in another Member State possess, where necessary through certain arrangements, a router for RPVA access in circumstances where the protection of the litigant as the ultimate consumer of legal services and the proper administration of justice are protected in an equal manner to those which are protected in the case of lawyers registered at a French Bar. If that is the case, the restriction on the freedom to provide services at issue in the main proceedings will not be justified.

39 Moreover, it must be noted that, as is clear from the file submitted to the Court, in proceedings in which representation by a lawyer is not mandatory and which are at issue in the case in the main proceedings, the communication of procedural documents by electronic means to the court hearing the case is optional. Thus, all lawyers, including those established in another Member State, may send their procedural documents to that court by lodging them at the registry or by post, while only the lawyers registered in the jurisdictional district of the court concerned had the possibility, where necessary, to use electronic communication.

40 Should it transpire that verification of status as a lawyer is not systematically and consistently required in the event that lodgement of documents at the registry or postal methods are used, in such a way as to ensure supervision of the operator that is equivalent to that ensured by setting up the RPVA system, the refusal to issue a router for RPVA access to lawyers established in a Member State other than the French Republic cannot be regarded as consistent with the objectives of the protection of the recipients of legal services and of the proper administration of justice.

41 It is for the referring court to determine, in light of that criterion of equivalence, whether the restriction on the freedom to provide services at issue in the main proceedings is consistent with those objectives. If that is not the case, the restriction on the freedom to provide services at issue in the main proceedings will not be justified.

42 In the light of the foregoing considerations, the answer to the question referred is that the refusal, on the part of the competent authorities of a Member State, to issue a router for RPVA access to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of

services, in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of Directive 77/249, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU. It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

The refusal, on the part of the competent authorities of a Member State, to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services, in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU. It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives.

[Signatures]