JUDGMENT OF THE COURT (Fifth Chamber)

2 December 2010 *

In Case C-225/09,

REFERENCE for a preliminary ruling under Article 234 EC, from the Giudice di pace di Cortona (Italy), made by decision of 23 April 2009, received at the Court on 19 June 2009, in the proceedings

Edyta Joanna Jakubowska

v

Alessandro Maneggia,

THE COURT (Fifth Chamber),

composed of E. Levits, acting as President of the Fifth Chamber, M. Ilešič (Rapporteur) and M. Safjan, Judges,

* Language of the case: Italian.

Advocate General: N. Jääskinen,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 24 June 2010,

after considering the observations submitted on behalf of:

— Ms Jakubowska, by M. Frigessi di Rattalma, avvocato,

— the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili and L. Ventrella, avvocati dello Stato,

— Ireland, by D. J. O'Hagan, acting as Agent, and M. Collins SC,

— the Hungarian Government, by R. Somssich, M. Fehér and Z. Tóth, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Portuguese Government, by L. Fernandes, acting as Agent,

— the Slovenian Government, by N. Pintar Gosenca, acting as Agent,

— the European Commission, by H. Støvlbæk and E. Montaguti, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 3(1)(g) EC, 4 EC, 10 EC, 81 EC and 98 EC, 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), Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained

(OJ 1998 L 77, p. 36), and the general principles of protection of legitimate expectations and acquired rights.

2 The reference has been made in the course of a dispute between Ms Jakubowska and Mr Maneggia concerning the payment of damages, which gave rise to proceedings currently pending before the Giudice di pace di Cortona (Magistrates' Court, Cortona), in which the lawyers representing Ms Jakubowska were removed from the register of the Ordine degli Avvocati di Perugia (Perugia Bar Council (Italy)).

Legal context

European Union law

Directive 77/249

3 The first subparagraph of Article 1(1) of Directive 77/249 states:

'This Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services.'

4 Article 6 of Directive 77/249 provides:

'Any Member State may exclude lawyers who are in the salaried employment of a public or private [enterprise] from pursuing activities relating to the representation of that [enterprise] in legal proceedings in so far as lawyers established in that State are not permitted to pursue those activities.'

5 Having regard to the different language versions of Article 6 and for the purpose of ensuring that all of those versions have the same scope, the words 'ente pubblico o privato' in the Italian version of that article must be read as referring to a 'public or private enterprise' (impresa pubblica o privata).

Directive 98/5

6 According to Article 3 of Directive 98/5:

'1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. …

…'

7 Article 6(1) of that directive states:

'Irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities he pursues in its territory.'

8 Article 7(1) of Directive 98/5 provides:

'In the event of failure by a lawyer practising under his home-country professional title to fulfil the obligations in force in the host Member State, the rules of procedure, penalties and remedies provided for in the host Member State shall apply.'

9 Article 8 of Directive 98/5 states:

'A lawyer registered in a host Member State under his home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the host Member State so permits for lawyers registered under the professional title used in that State.'

10 Having regard to the different linguistic versions of Article 8 and for the purpose of ensuring that all of those versions have the same scope, the terms 'ente pubblico o privato' in the Italian version of that article must be read as referring to a 'public or private enterprise' (impresa pubblica o private).

National legislation

11 The second paragraph of Article 3 of Royal Decree-Law No 1578 of 27 November 1933 governing the professions of 'avvocato' and 'procuratore legale' (ordinamento delle professioni di avvocato e procuratore legale, *Gazzetta ufficiale del Regno d'Italia* No 281 of 5 December 1933), converted into law, after amendment, by Law No 36 of 22 January 1934 (*Gazzetta ufficiale del Regno d'Italia* No 24 of 30 January 1934) provides:

'[The practice, in particular, of the profession of lawyer is] incompatible with any employment or office paid from State, provincial or local authority funds … and, in general, by any administration or public body subject to the supervision or control of the State, provinces or local authorities.'

12 Law No 662 of 23 December 1996 on measures to rationalise public finances (misure di razionalizzazione della finanza pubblica, ordinary supplement to the GURI No 303 of 28 December 1996), as amended by Decree-Law No 79 of 28 March 1997 on urgent measures for fiscal adjustment (misure urgenti per il riequilibrio della finanza pubblica), converted into law, after amendment, by Law No 140 of 28 May 1997 (GURI No 123 of 29 May 1997, p. 5, 'Law No 662/96'), provides in Article 1(56) and (56a):

'56. The … laws and regulations which prohibit registration with a Bar shall not apply to the officials of public administrations working part-time whose working hours do not exceed 50 per cent of full-time work.

56a. The provisions prohibiting the registration with a Bar and the practice of law by the persons referred to in subparagraph 56 shall be repealed. The other provisions relating to the conditions of registration with a Bar and the practise of law shall remain in force. Officials registered with a Bar and who practise as lawyers shall not be instructed in their professional capacity by the local authorities; those officials shall not provide legal assistance in cases in which a local authority is a party.'

13 Law No 339 of 25 November 2003 laying down rules relating to the incompatibility of the practice of the profession of lawyer (norme in material di incompatibilità dell'esercizio della professione di avvocato, GURI No 279 of 1 December 2003, p. 6, 'Law No 339/2003'), entered into force on 2 December 2003, provides in Article 1:

'The provisions of Article 1(56), (56a) and (57) of Law No [662/96] shall not apply to the registration of lawyers, for whom the restrictions and prohibitions under Royal Decree-Law No 1578 of 27 November 1933, converted with amendments into Law No 36 of 22 January 1934 as subsequently amended, shall remain in force.'

14 Article 2 of the same law provides:

'1. Public officials registered as lawyers with a Bar on the date on which Law No [662/96] came into force and still registered may opt to remain in salaried employment, notifying their decision to the Bar Council with which they are registered within 36 months of the date on which this law comes into effect.

If notification is not made within the prescribed period, the Bar Councils shall of their own motion remove from the register the persons registered with their Bars.

2. Public officials are entitled, in the case referred to in paragraph 1, to be re-admitted to full-time employment.

3. Within the same period of 36 months referred to in paragraph 1, officials may opt to terminate their salaried employment and consequently to maintain their registration as lawyers.

4. Part-time officials who have opted for the legal profession in accordance with this law shall, for five years, retain the right to be re-admitted to full-time employment with their administration within three months of making the request, provided they would not be supernumerary, in the grade they held at the time of exercising the option. In that case their seniority shall be suspended throughout the period during which they are not in its service and shall begin to accrue again at the date of their re-admission.'

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

15 Ms Jakubowska issued a summons against Mr Maneggia before the Guidice di pace di Cortona seeking EUR 200 damages on the ground that Mr Maneggia had accidentally damaged her car.

16 In those proceedings Ms Jakubowska was represented by Mr Mazzolai and Mr Nardelli, lawyers registered at the Bar of Perugia. As part-time public officials, they were both covered by Article 1(56) and (56a) of Law No 662/96.

17 After the entry into force of Law No 339/2003 and the expiry of the period prescribed in Article 2(1) thereof, and while the case in the main proceedings was pending before the national court the Perugia Bar Council issued two decisions ordering those lawyers to be removed from the register.

18 Ms Jakubowska submitted a statement in which she requested that her lawyers be authorised to continue to represent her, arguing that Law No 339/2003 is contrary to the EC Treaty and the general principles of the protection of legitimate expectations and acquired rights.

19 In those circumstances the Giudice di pace di Cortona decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must Articles 3(g) [EC], 4 [EC], 10 [EC], 81 [EC] and 98 [EC] be interpreted as precluding national rules, such as those in Articles 1 and 2 of Law No 339/2003 … which reintroduce the incompatibility of the practice of law by part-time public officials and prohibit such officials from practising as lawyers, despite being qualified to do so, by laying down that such lawyers shall be removed from the register by the competent Bar Council unless the public official opts to relinquish his salaried post?

2. Must Articles 3(g) [EC], 4 [EC], 10 [EC], and 98 [EC] be interpreted as precluding national rules, such as those in Articles 1 and 2 of Law No 339/2003 …?

3. Must Article 6 of … Directive 77/249 … be interpreted as precluding national rules such as those in Articles 1 and 2 of Law No 339/2003 … where those national rules are also applicable to lawyers in salaried employment practising law under the freedom to provide services?

4. Must Article 8 of Directive 98/5 … be interpreted as meaning that it does not apply to lawyers in part-time public employment?

5. Do the general principles of [European Union] law on the protection of legitimate expectations and acquired rights preclude national rules, such as those in Articles 1 and 2 of Law No 339/2003 … which introduce the incompatibility of the practice of law by part-time public officials and which also apply to lawyers already registered at the Bar when Law No 339/2003 came into effect, providing in Article 2 for only a short "moratorium" for them to choose between employment [as a public official] and practice of the profession of lawyer?'

20 In answer to the written questions which the Court put to Ms Jakubowska's legal representatives pursuant to Article 54a of the Rules of Procedure of the Court of Justice, Mr Nardelli, by letter of 31 May 2010, produced a certificate from the Perugia Bar Council from which it is apparent that he remains formally registered with that Bar until the latter is informed of the date of notification of the decision of the National

Bar Council rejecting Mr Nardelli's appeal against the decision to remove him from the register.

21 By the same letter, Mr Nardelli informed the Court that Mr Mazzolai had waived his right to act as legal counsel conferred on him in the main proceedings. He also indicated that Ms Jakubowska had instructed Mr Frigessi di Rattalma in order to represent her at the hearing.

The questions referred for a preliminary ruling

Admissibility of the questions referred for a preliminary ruling

22 As a preliminary point, it must be observed that the fact that the questions referred for a preliminary ruling have no connection with the subject matter of Ms Jakubowska's action against Mr Maneggia does not make them inadmissible. Those questions are intended to enable the national court to assess the legality of national rules whose application raised a preliminary issue in the main proceedings. Since that issue forms part of the case, the national court is entitled to ask the Court to interpret the rules of law of the European Union which are, in its view, relevant to that matter.

23 Without calling into question the possibility of making such a reference for a preliminary ruling, a number of governments who have submitted observations to the Court, and the European Commission, have nonetheless raised pleas of inadmissibility with respect to the questions referred by the Giudice di pace di Cortona.

24 Ireland and the Austrian Government submit that all the elements of the case in the main proceedings relating to the possibility for Ms Jakubowska's legal representatives to practise law are limited to the territory of a single Member State. The issues of European Union law raised by the national court are therefore purely hypothetical and the reference for a preliminary ruling should, for that reason, be declared inadmissible.

25 According to the Hungarian Government, the Italian law set out by the national court falls, in any event, outside the scope of the provisions of European Union law on the exercise of the profession of lawyer, given that that national law concerns public officials, whereas Directives 77/249 and 98/5 concern the practice of law by independent lawyers or those in the salaried employment of another lawyer, association or enterprise.

26 The Commission takes the view that the third question must be regarded as hypothetical and therefore inadmissible, because that question concerns the practice as a lawyer under the freedom to provide services, whereas the rules at issue in the main proceedings concern establishment as a lawyer.

27 The Commission also expresses doubts as to the admissibility of the fifth question, having regard to the fact that the Italian rules, with respect to which the interpretation of the general principles of European Union law has been requested, were not adopted in order to give effect to obligations created by that law for the Italian Republic.

28 In the light of the various pleas of inadmissibility, it should be recalled that questions concerning European Union law enjoy a presumption of relevance. Thus, the Court

may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25, and to Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36).

29 As regards the first, second and fourth questions, it is not obvious that the interpretation sought is unrelated to the actual facts or the purpose of the preliminary issue which arose in the dispute in the main proceedings or that the problem is hypothetical.

30 First, it should be recalled that a law which extends to the whole of the territory of a Member State may, in some circumstances, affect trade between Member States within the meaning of Article 81 EC (see, to that effect, Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 33, and *Cipolla and Others*, paragraph 45). Consequently, the first and second questions, asking whether the rules of European Union law on competition preclude national rules such as Law No 339/2003, are not obviously irrelevant.

31 Second, as regards the fourth question, it should be recalled, as the Italian Government and the Commission observed at the hearing, that the rule laid down in Article 8 of Directive 98/5 is not intended solely to grant lawyers registered in a host Member State under their home-country professional title the same rights as those enjoyed by lawyers registered in the host Member State under the professional title obtained there. That rule also ensures that the latter do not suffer reverse discrimination, which

might arise if the rules which are imposed on them were not applied to the lawyers registered in the host Member State under a professional title obtained in another Member State.

32 Therefore, the fact that the procedure for removing lawyers from the register of the Perugia Bar which has given rise to the questions referred for a preliminary ruling concerns lawyers practising law in Italy under the professional title obtained in that Member State does not mean that the fourth question is hypothetical. On the contrary, the interpretation requested of Article 8 of Directive 98/5 will help the national court to determine whether Law 339/2003 gives rise to reverse discrimination contrary to European Union law.

33 Moreover, the admissibility of the fourth question is not undermined by the arguments of the Hungarian Government that, inasmuch as it concerns public officials Law No 339/2003 does not govern any of the situations referred to in Article 8 of Directive 98/5, which concern only lawyers practising as salaried lawyers 'in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise'.

34 In that connection, it should be recalled that the derogation to which the Hungarian Government refers, namely the inapplicability of European Union law to public officials, only concerns posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties and which thus presume the existence of a special relationship to the State. However, the rules of European Union law on freedom of movement remain applicable to posts which, whilst coming under the State or other bodies governed by public law, do not involve any association with tasks belonging to the public service properly so called (see, to that effect, Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española* [2003] ECR I-10391, paragraphs 39 and 40, and Case C-345/08 *Peśla* [2009] ECR I-11677, paragraph 31).

35 As regards, more particularly, the concept of 'public enterprise', in Article 8 of Directive 98/5, it has been consistently held that, where a body forming part of the public administration carries on activities of an economic nature which do not fall within the exercise of public powers, it must be regarded as such an enterprise (see, to that effect, Case C-69/91 *Decoster* [1993] ECR I-5335, paragraph 15, Case C-343/98 *Collino and Chiappero* [2000] ECR I-6659, paragraph 33, and Case C-113/07 P *SELEX Sistemi Integrati* v *Commission* [2009] ECR I-2207, paragraph 82).

36 It follows that the scope *ratione materiae* of Law No 339/2003 — which, read in conjunction with Royal Decree-Law No 1578 of 27 November 1933, to which it refers, concerns lawyers registered with one of the Bars of the Italian Republic who are also employed by a public administration or institution subject to the supervision or control of the Italian Republic or one of its regional authorities — coincides with that of Article 8 of Directive 98/5 as regards lawyers employed by a body which, although subject to the control of the Italian State or one of its regional authorities, constitutes a 'public enterprise'.

37 Having regard to all of those considerations, the reference for a preliminary ruling must be considered admissible as far as concerns the first, second and fourth questions.

38 On the other hand, as regards the third question, which concerns Directive 77/249, and, therefore, the practice of law under the freedom to provide services, it must be held that an answer to that question by the Court of Justice cannot be useful to the national court. The issue which arose before that court concerns whether the removal of lawyers from the register pursuant to Law No 339/2003 is compatible with European Union law. As the Commission rightly observed, in that context, the subject-matter

of the question is the establishment as a lawyer, which is one of the matters governed by Directive 98/5, and not the practice of law under the freedom to provide services.

39 Therefore, the reference for a preliminary ruling must be declared inadmissible with respect to the third question.

40 Finally, as regards the fifth question, it is clear from the order for reference that, by that question, the Giudice di pace di Cortona asks the Court to examine, on the basis of its case-law on the principles of the protection of legitimate expectations and legal certainty, the unfavourable amendment brought about by Law No 339/2003 for those wishing to exercise the profession of lawyer and work part-time for a public body, it having put an end to the more favourable regime for them under Law No 662/96.

41 There is no need to rule of the plea of admissibility put forward by the Commission as regards that question, it being sufficient to state that, in any event, the Court cannot usefully answer that question given the lack of information necessary to do so.

42 As regards the principle of legal certainty, the Court has consistently held that rules involving negative consequences for individuals should be clear and precise and their application predictable for those subject to them (Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* [2010] ECR I-8301, paragraph 100 and the case-law cited). Neither the order for reference nor the observations submitted to the Court enable it to determine from what perspective or for what reason the clarity or foreseeability of Law No 339/2003 is challenged.

43 At most, the national court has clarified the question concerning that principle by explaining that Law No 339/2003 produces retroactive effects, contrary to the principle of legal certainty. However, the alleged retroactivity of Law 339/2003 is clearly contradicted by the finding, also in the order for reference, that the entry into force of that law does not affect the right to practise law and to work concurrently as a public official conferred, until that entry into force, by Law No 662/96, since Law No 339/2003 also introduced a transitional period of 3 years in order to prevent the change that it introduced from becoming immediate.

44 Concerning the principle of the protection of legitimate expectations, it is well established that individuals are not justified in having an expectation that an existing situation which is capable of being altered by the national authorities in the exercise of their discretionary power will be maintained (Case C-201/08 *Plantanol* [2009] ECR I-8343, paragraph 53, and the case-law cited). In the light of that case-law, a question such as the fifth question referred in the present proceedings cannot usefully be examined by the Court without some description of the evidence put forward in the main proceedings in order to show that the adoption of the rules at issue is not simply a case of the legislature amending the existing rules for the future.

45 In the present case, the national court simply stated that Law No 339/2003 amends the regime previously in force under Law No 662/96 in a very substantial and, according to some, surprising manner. It must be held that the mere fact that the legislature has adopted a new law and that it differs considerably from that previously in force does not provide a sufficient basis for the Court to carry out an adequate examination of the fifth question.

46 Having regard to the foregoing, the reference for a preliminary ruling is also inadmissible with respect to the fifth question.

Substance

The first and second questions

47 By its first and second questions, which it is appropriate to examine together, the national court asks essentially whether Articles 3(1)(g) EC, 4 EC, 10 EC, 81 EC and 98 EC preclude national rules such as those deriving from Articles 1 and 2 of Law No 339/2003 which prevent public officials who work part-time from practising the profession of lawyer, despite their being qualified to do so, by providing that they are to be removed from the register of the Bar Council.

48 Although it is true that Article 81 EC is, in itself, concerned solely with the conduct of enterprises and not with laws or regulations emanating from Member States, that article, read in conjunction with Article 10 EC, none the less requires Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to enterprises (*Arduino*, paragraph 34, and *Cipolla*, paragraph 46).

49 The Court has held that Articles 10 EC and 81 EC are infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 81 EC or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility

for taking decisions affecting the economic sphere (*Arduino*, paragraph 35, and *Cipolla and Others*, paragraph 47).

50 The fact that a Member State orders the organs of a professional association such as the various Bar Councils to remove from the register members of that profession who are also part-time public officials who have not opted, within the period prescribed, either to remain registered or to continue working for the public body which employs them, does not establish that that Member State has divested its own rules of the character of legislation by the State. The Bar Councils have no influence over the automatic adoption, prescribed by the law, of the decisions to remove from the register.

51 For similar reasons, national rules such as those at issue in the main proceedings cannot be regarded as imposing or favouring agreements, decisions or concerted practices contrary to Article 81 EC.

52 Those findings are not undermined by Article 3(1)(g) EC, which envisages action by the European Union regarding a system ensuring that competition in the internal market is not distorted, or by Articles 4 EC and 98 EC, which concern the adoption of economic policy in compliance with an open market economy with free competition.

53 In the light of the foregoing, the answer to the first and second questions is that Articles 3(1)(g) EC, 4 EC, 10 EC, 81 EC and 98 EC do not preclude national rules which prevent part-time public officials from practising the profession of lawyer,

despite their being qualified to do so, by laying down that they are to be removed from the register of the competent Bar Council.

The fourth question

54 As set out in its order for reference, by its fourth question, the Giudice di Pace di Cortona asks, in essence, whether the possibility left by Article 8 of Directive 98/5 to the host Member State to regulate and, therefore, where appropriate, to restrict the exercise, by lawyers who are registered with a Bar, of certain categories of employment posts also exists with respect to lawyers who only want to work part-time in such a post.

55 In order to answer that question, it is appropriate to point out first of all that, by the adoption of Directive 98/5, the legislature of the European Union sought to put an end, in particular, to the differences in national rules on the conditions for registration as a lawyer (Case C-506/04 *Wilson* [2006] ECR I-8613, paragraph 64).

56 The Court has already held that, given that objective of Directive 98/5, the directive must be regarded as carrying out a complete harmonisation of the prior conditions for registration with the competent authority of the host Member State, those conditions being limited essentially to the presentation to that authority of a certificate attesting to registration with the competent authority of the home Member State (see, to that effect, *Wilson*, paragraphs 65 to 67).

57 However, according to the unambiguous wording of Article 6 of Directive 98/5, the registration in a host Member State of lawyers practising under a professional title acquired in another Member State is to be subject to the rules of professional conduct in force in the host Member State. Those rules, unlike those concerning the preliminary conditions required for registration, have not been harmonised and may therefore differ considerably from those in force in the home Member State. Moreover, as Article 7(1) of Directive 98/5 confirms, the failure to comply with those rules may lead to a lawyer being removed from the register in the host Member State.

58 It must be held that Article 8 of Directive 98/5 concerns a specific category of rules of professional conduct to which Article 6 of that directive refers, namely those determining to what extent registered lawyers may practise 'as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise'.

59 Having regard to the broad terms chosen by the European Union legislature, it must be held that Article 8 concerns all the rules introduced by the host Member State in order to prevent conflicts of interest which may, in its assessment, lead to a situation in which a lawyer is registered with a Bar and employed by another lawyer, an association or firm of lawyers or a public or private enterprise.

60 The prohibition imposed by Law No 339/2003 on lawyers registered in Italy being employed, even part-time, by a public enterprise forms part of the rules referred to in Article 8 of Directive 98/5, at least in so far as that prohibition concerns practising concurrently as a lawyer and working in a public enterprise.

61 Moreover, the fact that the rules thus introduced by the Italian Republic may be regarded as strict cannot be criticised per se. The absence of conflicts of interest is essential to the practice of the profession of lawyer and requires, in particular, that lawyers should be in a situation of independence vis-à-vis the public authorities and other operators, by whom they must never be influenced (see, to that effect, Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraphs 100 to 102). It is true that the rules laid down in that regard should not go beyond what is necessary to achieve the objective of preventing conflicts of interest. The proportionality of a prohibition such as that imposed by Law No 339/2003 does not, however, have to be examined in the context of the present question, which does not concern that aspect.

62 Finally, as already held in the context of the examination of the admissibility of that question, it should be pointed out that Article 8 of Directive 98/5 requires the rules of the host Member State to be applied to all lawyers registered in that Member State, whether they are registered under the professional title obtained in that Member State or that obtained in another Member State.

63 Subject to the verification to be carried out in that regard by the Italian courts, it does not appear that Law No 339/2003 applies exclusively to lawyers of Italian origin thereby giving rise to reverse discrimination. It is true that the lawyers concerned by that law are those interested in working for bodies subject to the supervision or control of the Italian Republic or its regional authorities. However, at least as far as posts in public enterprises are concerned, lawyers registered with one of the Bars of the Italian Republic and therefore affected by the prohibition on practising law and working for such bodies may not only be Italian nationals, but nationals from other Member States.

64 In the light of all of the foregoing considerations the answer to the fourth question is that Article 8 of Directive 98/5 must be interpreted as meaning that it is open to a host Member State to impose on lawyers registered with a Bar in that Member State who are also, whether full or part-time, in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise, restrictions on the practice of the profession of lawyer concurrently with that employment, provided that those restrictions do not go beyond what is necessary in order to attain the objective of preventing conflicts of interest and apply to all the lawyers registered in that Member State.

Costs

65 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 (Fifth Chamber) hereby rules:

1. **Articles 3(1)(g) EC, 4 EC, 10 EC, 81 EC and 98 EC do not preclude national rules which prevent part-time public officials from practising the profession of lawyer, despite their being qualified to do so, by laying down that they are to be removed from the register of the competent Bar Council.**

2. Article 8 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained must be interpreted as meaning that it is open to a host Member State to impose on lawyers registered with a Bar in that Member State who are also, whether full or part-time, in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise, restrictions on the exercise of the profession of lawyer concurrent with that employment, provided that those restrictions do not go beyond what is necessary in order to attain the objective of preventing conflicts of interest and apply to all the lawyers registered in that Member State.

[Signatures]