Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 16 September 2020[1]

Case C-218/19

Adina Onofrei
v
Conseil de l'ordre des avocats au barreau de Paris,
Bâtonnier de l'ordre des avocats au barreau de Paris,
Procureur général près la cour d'appel de Paris

(Request for a preliminary ruling from the Cour de cassation (Court of Cassation, France))

(Reference for a preliminary ruling — Free movement of persons — Freedom of establishment — Access to the profession of lawyer — Exemption from training and professional certificate — National practice limiting the exemption to the civil servants having practised national law, on the national territory and in the national civil service)

I. Introduction

1. Ms Adina Onofrei ('the appellant') has both Portuguese and Romanian nationality. She holds two Master's degrees and a Doctorate in law from the Universités Paris 1 and Paris II. She has worked at the European Commission as an administrator for over eight years. She sought to register with the Ordre des avocats au barreau de Paris ('the Paris Bar'), relying on one of the exemptions that the French legislation provides from the obligation to hold the professional certificate (and thus from the mandatory professional training) for 'category A civil servants, or persons treated as civil servants in that category, who have performed legal work for at least eight years, in an administration or a public service or an international organisation'.

2. The appellant's application was rejected by the Paris Bar on the ground that she is neither a member of the French civil service, nor has she been seconded by the French civil service to an international organisation, nor has she practised on the French territory. The decision of the Paris Bar was upheld on appeal, with the stated reason that the appellant had not demonstrated any previous practise of French law. Seised on appeal on points of law, the Cour de cassation (Court of Cassation, France) now inquires as to the compatibility of such national rules, or rather their interpretation and application practice, with Articles 45 and 49 TFEU.

1 Original language: English.

II. Legal framework

3. Article 11 of Loi no 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques (Law No 71-1130 of 31 December 1971 on the reform of certain judicial and legal professions) ('Law No 71-1130') provides:

'No person may enter the profession of lawyer if he does not satisfy the following conditions:

1. Be French, a national of a Member State of the European Union or a party to the Agreement on the European Economic Area …;

2. Hold, subject to the regulatory provisions adopted to give effect to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, as amended, and to the regulatory provisions concerning persons who have performed certain functions or activities in France, at least a Master's degree in law or qualifications recognised as equivalent for admission to the profession of lawyer …;

3. Hold the certificate of competence for the profession of lawyer, subject to the regulatory provisions referred to in paragraph 2, or in the context of mutual recognition, the examination laid down in the final subparagraph of the present article;

4. Not have been the perpetrator of acts which gave rise to a criminal conviction for acts contrary to standards of honour, probity or morality;

…

6. Must not personally have been declared bankrupt or have been subject to any other penalty …'

4. Article 98 of Décret no 91-1197 du 27 novembre 1991 organisant la profession d'avocat (Decree No 91-1197 of 27 November 1991 on the organisation of the profession of lawyer) ('Decree No 91-1197') provides that 'The following are exempt from the theoretical and practical training and from the certificate of competence for the profession of lawyer:

1. Notaries, bailiffs, clerks of commercial courts, court administrators and legal agents for the recovery and liquidation of undertakings, former trustees and court administrators, industrial property lawyers and former patent (inventions) lawyers having carried out their functions for at least five years;

2. University lecturers, assistant lecturers and teaching staff, if they hold a doctorate in law, economics or management, supported by five years of legal education in this capacity in training and research units;

3. In-house lawyers who have completed at least eight years of professional practice within the legal department of one or more undertakings;

4. Category A civil servants and former category A civil servants, or persons treated as civil servants in that category, who have performed legal work in that capacity for at least eight years, in an administration or a public service or an international organisation;

5. Lawyers involved for at least eight years in the legal work of a trade union;

6. Lawyers employed by a lawyer, an association or law society, by an office of an advocate or lawyer in the Conseil d'État (Council of State, France) and in the Cour de cassation (Court of Cassation), who have completed at least eight years of professional practice in this capacity after obtaining the title or degree referred to in paragraph 2 of Article 11 of the Law of 31 December 1971 above;

7. Employees of a member of parliament or senator's assistants who have carried out a legal activity predominantly in a senior capacity for at least eight years in that role;

Persons referred to in paragraphs 3, 4, 5, 6 and 7 may have carried out their activities in several of the functions covered in these provisions provided that the total duration of these activities is at least equal to eight years.'

5. Article 98-1(1) of the same decree provides that:

'Persons benefiting from an exemption provided for in Article 98 must have successfully completed, before the selection panel provided for in Article 69, an examination to review their knowledge of professional ethics and regulations …'

III. Facts, national proceedings and questions referred

6. The appellant, who is of Portuguese and Romanian nationality, holds two Master's degrees and a Doctorate in law from the Universités Paris 1 and Paris II. For more than eight years, she has worked at the European Commission as an administrator, in particular in the Directorate-General for the Internal Market and the Directorate-General for Competition. During that time, she has predominantly dealt with State aid and cartel cases.

7. The appellant sought to register with the Paris Bar. Satisfying apparently all the other conditions of Article 11 of Law No 71-1130, including the need to have obtained all the required diplomas in law in France, she sought to rely on Article 98(4) of Decree No 91-1197 in order to claim dispensation from the otherwise mandatory professional certificate, that being the 'certificat d'aptitude à la profession d'avocat' (certificate of competence for the profession of lawyer) ('certificate of competence').

8. By the same token, she also sought to be exempted from the otherwise mandatory preparatory training which leads to, when successfully completed, that certificate of competence. The Council of the Paris Bar and the President of the Paris Bar explain that that training lasts 18 months, involves an internship in a law firm and comes to an end upon successful completion of a final examination.

9. The appellant takes the view that the work she has performed at the European Commission meets the conditions of the exemption provided for in Article 98(4) of Decree No 91-1197.

10. However, the Council of the Paris Bar rejected her application because the appellant was neither a member of the French civil service nor was she seconded by the French civil service to an international organisation. In addition, the Council of the Paris Bar also stated that her professional experience was not acquired on French territory.

11. The appellant challenged that decision before the Cour d'appel de Paris (Court of Appeal, Paris, France). By judgment of 11 May 2017, that court upheld the decision. That court held that the professional experience of the appellant must be examined *in concreto* so as to establish whether the appellant's experience corresponds to the training, skills and responsibilities inherent in category A civil servants. It further held that it is necessary to ensure the lawyer's satisfactory knowledge of national law in order to guarantee the full, relevant and effective exercise of the rights of litigants.

12. The Cour d'appel de Paris (Court of Appeal, Paris) then listed the relevant positions that the appellant assumed within the services of the European Commission. It then outlined the specific tasks that the appellant carried out in those positions. On that basis, that court concluded that those tasks did not reveal any application of French law, thereby not warranting the finding that the appellant had actually practised any national law. Thus, the legal practice acquired by the appellant did not correspond to the criteria of Article 98(4) of Decree No 91-1197.

13. The appellant brought an appeal on a point of law before the Cour de cassation (Court of Cassation). In her view, the judgment of the Cour d'appel de Paris (Court of Appeal, Paris) construed the relevant exemption too restrictively. The interpretation requiring the practice of French law, as well as the professional experience, to have been obtained in France overlooks, in her view, the fact that EU law is part of national law. That leads to indirect discrimination favouring officials of the French civil service, to the detriment of officials of the EU civil service, and constitutes a restriction to the free movement of workers and the freedom of establishment. While acknowledging that the aim of ensuring an effective defence of the rights of litigants is legitimate, the means employed to that effect are not appropriate and go beyond what is necessary to that end. In that respect, the appellant contested the way in which her professional experience had been evaluated. She argued that requesting from her proof of her skills would have constituted a less restrictive means of achieving that aim.

14. The referring court takes note of the fact that doubts may indeed arise as to whether the regime at issue can be considered a restriction of the freedom of movement of workers and the freedom of establishment. In its view, Article 98(4) of Decree No 91-1197 subjects the exemption at issue to three cumulative conditions which require that the applicants (i) belong to the French civil service, (ii) have obtained professional experience in France, and (iii) have practised French law. That court notes, moreover, that Article 98(4) of Decree No 91-1197 does not require that an applicant proves knowledge concerning national courts and tribunals or procedures before them.

15. In those circumstances, the Cour de cassation (Court of Cassation) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the principle that the Treaty establishing the European Economic Community, now, after amendment, the Treaty on the Functioning of the European Union, has created its own legal system, which is integrated into the legal systems of the Member States and which their courts are bound to apply, preclude national legislation which makes the grant of an exemption from the training and diploma requirements laid down, in principle, for entry to the profession of lawyer, dependent on the requirement of sufficient knowledge, on the part of the person requesting exemption, of national law of French origin, so that similar knowledge of the law of the European Union alone is not taken into account?

(2) Do Articles 45 and 49 TFEU preclude national legislation which restricts an exemption from the training and diploma requirements laid down, in principle, for entry to the profession of lawyer, to certain members of the civil service of the same Member State who have performed legal work in that capacity, in France, in an administration or a public service or an international organisation, and which excludes from the scope of that exemption members or former members of the European civil service who have performed legal work in that capacity, in one or more fields of the law of the European Union, within the European Commission?'

16. Written observations have been submitted by the appellant, the Council and the President of the Paris Bar, the Greek and French Governments, as well as by the European Commission. Those parties, with the exception of the Greek Government, also presented oral argument during the hearing which took place on 17 June 2020.

IV. Assessment

17. This Opinion is structured as follows. I shall first focus on the exact conditions stemming from Article 98(4) of Decree No 91-1197 and in that connection also clarify the precise object of the preliminary questions submitted by the referring court (A). I will then examine the compatibility of the conditions at issue, as described by the referring court, with Articles 45 and 49 TFEU (B).

A. Preliminary remarks

18. Before assessing whether the national regime at issue in the main proceedings is compatible with EU law, the actual content of that regime must, evidently, be determined. Unfortunately, that is not a straightforward exercise in the present case, as will be explained in the next section.

1. The conditions under Article 98(4) of Decree No 91-1197

19. Article 11(3) of Law No 71-1130 states that the possibility of exercising the profession of lawyer in France is, subject to derogations, conditional upon holding the certificate of competence. Article 98 of Decree No 91-1197 sets out those derogations vis-à-vis that certificate of competence.

20. The exemption at issue in the main proceedings is provided for in Article 98(4) of Decree No 91-1197. By its wording, it sets out three requirements: (i) 'category A civil servants, or persons treated as civil servants in that category', (ii) who have performed 'legal work for at least eight years', and (iii) who have performed that legal work 'in an administration or a public service or an international organisation'.

21. The referring court has observed that that exemption is, as a *matter of case-law*, understood to require the applicants to satisfy three cumulative conditions: (i) being members of the *French* civil service, (ii) having carried out legal work in the *French* territory and (iii) having practised *French* law.

22. I must admit not immediately seeing from which of the conditions set out in the text of Article 98(4) of Decree No 91-1197 such case-law and such conditions flow. Moreover, neither the concrete case in the main proceedings, nor what appears to be the broader application practice at the national level, really assist the interpreter in understanding what conditions are in fact applicable at the national level under Article 98(4) of Decree No 91-1197.

23. At the level of the *concrete case* in the main proceedings, I note that, first, the appellant's application was rejected by the Council of the Paris Bar because she was neither a member of the French civil service nor was she seconded as such to an international organisation. Moreover, the Council of the Paris Bar stressed, invoking in a general way 'the case-law of the Cour de cassation (Court of Cassation)' in this regard, that the appellant's professional experience was also not acquired in the French territory.

24. Second, while the Cour d'appel de Paris (Court of Appeal, Paris) upheld the rejection decision, it nonetheless based its conclusion on a different ground, namely that the appellant did not satisfy the condition relating to the practice of French law. It insisted that the assessment of the relevant practice of French law must be carried out *in concreto*. Having carried out such an assessment, that court concluded that the appellant did not demonstrate any experience in French law.

25. Third, the referring court states that, for the exemption at issue to be applicable, applicants must fulfil the three *cumulative* conditions noted above in point 21 of this Opinion.

26. At the more *general level*, the precise operation of the exemption at issue does not become much clearer when presented with some of the examples of national case-law that have been provided by the referring court and by the parties to the present proceedings. Those examples reveal a considerable variety of approaches in interpreting the conditions set out in Article 98(4) of Decree No 91-1197.

27. As regards, first, the *condition of membership of the French civil service*, the very existence of that condition has been heavily contested by the French Government. That government maintained that, in its view, such requirement arises neither from Article 11 of Law No 71-1130, which only mentions the exercise of activities in France,[2] nor from Article 98(4) of Decree No 91-1197 which refers, in principle, to persons *treated as* 'category A' officials ('*les personnes assimilées*' in the French original).

28. Some of the case-law examples which have been provided in the present proceedings concern applications filed by officials of the United Nations or of the European Union.[3] The reasons for which these applications were not approved appear to be based, indeed, not on the absence of membership of the French civil service, but on the lack of practice of French law or on the failure to comply with the territoriality condition. However, I also note that the Cour d'Appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence, France) accepted that the conditions at issue were satisfied by an official of the Principality of Monaco, who was of French nationality. In a decision that was subject to some discussion at the hearing, that court stated that the law of Monaco is very comparable to French law and that the functions performed by the applicant could be classified as category A for French officials or those treated as such.[4] The application for the exemption was thus granted to a person who clearly *was not* a member of the French civil service.

29. The wording of Article 98(4) of Decree No 91-1197 makes the exemption at issue applicable also to officials having exercised their activities in an international organisation. It is unclear whether that element applies to any official of an international organisation (located in France) or whether it applies only to persons who are members of the French civil service and who have been *seconded* to an international organisation. The decision of the Council of the Paris Bar in the main proceedings appears to be based on the latter understanding.

30. As regards, second, *the condition of territoriality*, the referring court explained that it is applicable also when the legal practice has been performed in an international organisation. Such reading has been construed as flowing from Article 11(2) of Law No 71-1130. That provision concerns the exemption from the obligation to hold a *diploma in law* and specifies, for what is relevant here, that it applies to persons having exercised certain functions in France. It appears that the national case-law cross-referred to that provision also when considering the exemption concerning the *certificate of competence*, although nothing on that point is said in Article 98(4) of Decree No 91-1197.

31. I understand that a similar reasoning was followed by the competent French authorities[5] with regard to the exemptions designed for in-house lawyers (under Article 98(3) of Decree No 91-1197[6]) and for persons having performed legal work in trade unions (under Article 98(5) of the same decree[7]). Therefore, as with Article 98(4), paragraphs 3 and 5 of Article 98 were also interpreted as laying down a territoriality requirement, even though those provisions do not include one, unlike Article 11(2) of Law No 71-1130.[8]

2 I understand that as a reference to Article 11(2) of Law No 71-1130 which provides for a possible exemption from the diploma in law to be granted to persons having performed certain activities *in France*.

3 See, for example, Cour d'appel de Paris, decision of 12 May 2016, No 15/1546; Cass. 1ère Civ, decision of 14 December 2016, No 15-26.635, FR:CCASS:2016:C101411; Cass. 1ère Civ, decision of 11 May 2017, No 16-17.295, FR:CCASS:2017:C100576; Cass. 1ère Civ, decision of 5 July 2017, No 16-20.441, FR:CCASS:2017:C100576.

4 Cour d'Appel d'Aix-en Provence, decision of 2 April 2015, No 14/15403.

5 Whose conformity with the national constitution was confirmed by the Conseil constitutionnel (Constitutional Council, France) by decision of 6 July 2016, No 2016-551 QPC, FR:CC:2016:2016.551.QPC.

6 Cass. 1ère Civ, decision of 28 March 2008, No 06-21.051, Bulletin 2008 I No 90; Cass. 1ère Civ, decision of 14 January 2016, No 15-11.305, FR:CCASS:2016:C100036.

7 Cass. 1ère Civ, decision of 14 December 2016, No 14-25.800, FR:CCASS:2016:C101410.

8 The same territoriality condition was also applied to the exemption for some categories of university teachers under Article 98(2) of Decree No 91-1197. Cass, 1ère Civ, decision of 15 July 1999, No 97-13.079, Bulletin 1999 I No 235 p. 152.

32. As regards, third, the condition concerning the *practice of French law*, it appears to have been held that although the concept of 'French law' may be interpreted as encompassing EU law, it cannot be limited to the latter. I understand that this interpretation of the concept of 'French law', combined with the necessity to interpret the exemption at issue strictly, led to the repeated rejections of applications of EU officials.

33. This Court is bound by national law as stated by the referring court. Therefore, in what follows, I shall assess the compatibility with EU law of the three (cumulative) conditions as stated in the order for reference and (re)confirmed in written clarifications provided by the Cour de cassation (Court of Cassation) and its *procureur général* (public prosecutor) following a request from this Court.

34. However, in that context, I also take note of two elements, which I shall come back to at the end of this Opinion. First, there appears to be some dissonance between the exemption conditions as stated in the text of Article 98(4) of Decree No 91-1197 and those apparently applied in practice. Second, there is considerable variety in the practical application of those conditions, which clearly goes beyond reaching different outcomes in factually different cases: the difference concerns the interpretation of the legal conditions themselves.

2. Reformulation of the preliminary questions

35. By its first question, the referring court inquires about the obligation under Article 98(4) of Decree No 91-1197 to have acquired *knowledge* of French law. The referring court wishes to know whether that requirement takes due account of the fact that, in short, EU law is an integral part of the Member States' national laws.

36. First, it appears from the order for reference and observations submitted to this Court that the term 'knowledge of French law' which featured in the wording of that question should rather be understood as '*practice* of French law'.

37. Indeed, it follows from the observations submitted in the present case, as well as from the hearing, that the applicants for the exemption at issue are not tested as regards their familiarity with French law. The only examination to which they seem to be subject appears to concern the rules of deontology under Article 98-1 of Decree No 91-1197.[9]

38. Second, in the context of the present case, I do not believe that it is necessary to address the first preliminary question separately. The issue of the nature of the relationship between the EU legal order and the national legal orders and the degree of their mutual integration and interdependency is indeed an intriguing one. However, in the confines of the present case, diving into such an issue indeed worthy of a Galilean dialogue is not necessary. In the context of the present case, that issue in fact arises only in the much more circumscribed context of what might be reasonably required as relevant legal experience for the purpose of bar admission in a Member State. Thus, for all practical purposes, the answer to the first question posed by the referring court will necessarily be addressed, but from a much narrower and pragmatic angle, within the second question posed.

39. Hence, in the light of those elements, I consider it appropriate to address both preliminary questions together as inquiring about whether the three conditions described by the referring court which apply under Article 98(4) of Decree No 91-1197 comply with Articles 45 and 49 TFEU.

9 See above, point 5 of this Opinion.

B. Compatibility with Articles 45 and 49 TFEU

40. It should be recalled at the outset that the present case does not fall under Directive 98/5/EC.[10] That regime concerns only lawyers qualified as such in their Member States of origin.[11] The present case relates to the conditions of the *first* access to the profession of lawyer in a Member State.

41. According to the established case-law, 'in the absence of harmonisation of the conditions of access to a particular occupation, the Member States are entitled to lay down the knowledge and qualifications needed in order to pursue it'.[12]

42. Nevertheless, EU law sets limits to the exercise of those powers. Provisions of national law must not hamper the effective exercise of the fundamental freedoms guaranteed, for what is relevant in the present case, by Articles 45 and 49 TFEU.[13]

43. The referring court explains that the profession of lawyer can be exercised in France in both a self-employed and employed capacity. Therefore, the national regime at issue must be examined in the light of both of the Treaty provisions. However, the key assessment, especially the one relating to limitations and their justification, is largely the same for both provisions.

1. Discrimination or an obstacle to access?

44. The present case concerns a person who does not wish to migrate between professional environments belonging to two different Member States. The appellant wishes to secure the possibility to migrate between the civil service of the European Commission and the profession of a lawyer in a Member State.

45. It follows from settled case-law that an EU official has the status of a migrant worker. Indeed, 'a [Union] national working in a Member State other than his State of origin does not lose his status of worker … through occupying a post within an international organisation …'.[14] The same is to be applied as regards the exercise of the rights conferred upon EU citizens by Article 49 TFEU.

46. For the purpose of the present case, I consider that a discussion as to whether the conditions at issue constitute indirect discrimination and/or an obstacle to free movement can be kept to a minimum. This is because the conditions at issue constitute, in my view, both.

47. First, as regards the indirect discrimination claim, I note that the appellant is of Romanian and Portuguese nationality.

10 Directive 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).

11 Judgment of 13 November 2003, *Morgenbesser* (C-313/01, EU:C:2003:612, paragraph 45).

12 See, for example, judgments of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, paragraph 34 and the case-law cited); of 6 October 2015, *Brouillard* (C-298/14, EU:C:2015:652, paragraph 48 and the case-law cited); and of 17 December 2015, *X-Steuerberatungsgesellschaft* (C-342/14, EU:C:2015:827, paragraph 44 and the case-law cited).

13 See, as regards Article 45 TFEU (then Article 39 EC), judgment of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, paragraph 35 and the case-law cited).

14 See, for example, judgments 3 October 2000, *Ferlini* (C-411/98, EU:C:2000:530, paragraph 42 and the case-law cited); of 16 December 2004, *My* (C-293/03, EU:C:2004:821, paragraph 37 and the case-law cited, as regards the statement of principle); of 16 February 2006, *Öberg* (C-185/04, EU:C:2006:107, paragraph 12 and the case-law cited); and of 21 January 2016, *Commission* v *Cyprus* (C-515/14, EU:C:2016:30, paragraph 45). See also judgment of 30 April 2019, *Wattiau* v *Parliament* (T-737/17, EU:T:2019:273, paragraph 82 et seq.).

48. Article 45 TFEU (and also Article 49 TFEU) 'prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, through the application of other distinguishing criteria, lead in fact to the same result'.[15] Indirect discrimination arises where the national rule at issue is 'intrinsically liable to affect migrant workers more than national workers and if there is a risk that it will place the former at a particular disadvantage'.[16]

49. I agree with the appellant and the Commission that the conditions at issue are naturally bound to intrinsically affect to a greater extent non-French nationals, such as the appellant. It is rather safe to assume that most French civil servants happen to be of French nationality. Thus, even if the applicable rule is based on a criterion different than nationality (being a member of the French civil service, not having French nationality), such a rule clearly constitutes an instance of indirect discrimination on the basis of nationality.

50. At the hearing, the Council and the President of the Paris Bar emphasised that the decision concerning the appellant's application was not based on her nationality and would have been exactly the same if she were a French national.

51. I fail to see the relevance of that argument. For the assessment of potential indirect discrimination being triggered, it suffices that the appellant is likely to be worse off because of a ground which is a protected ground (here, nationality). The fact that somebody else could also be in the same situation, despite not belonging to the protected group, is not really relevant for the conclusion that there is a rule which indirectly favours own nationals.

52. The French Government as well as the Council and the President of the Paris Bar further exclude the possibility that the practice-based conditions could amount to indirect discrimination because persons practising in France, and thus familiar with French law, and those practising in another Member State (or in service of the European Commission), and thus not familiar with French law, are not in comparable situations in terms of access to the profession of lawyer as their respective legal skills relate to different legal orders.

53. I disagree.

54. Under settled case-law, comparability of situations must be assessed in the light of the subject matter and purpose of the national legislation which makes the distinction at issue, as well as, where appropriate, in the light of the principles and objectives pertaining to the field to which that national legislation relates.[17]

55. In the present case, depending on the level of abstraction chosen, that means either the discussion whether or not French officials and Commission officials are comparable with regard to seeking admission to a French bar (the overall purpose) or, alternatively, whether the two groups of people are comparable with regard to the specific exemption that the appellant seeks to rely on (specific purpose).

56. As to the *overall* purpose, I fail to see why any lawyer could not be regarded, in general, as comparable for the purpose of admission to the bar and the profession of a lawyer.

15 See, for example, judgments of 28 June 2012, *Erny* (C-172/11, EU:C:2012:399, paragraph 39); of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken* (C-514/12, EU:C:2013:799, paragraph 25); or of 5 February 2014, *Hervis Sport- és Divatkereskedelmi* (C-385/12, EU:C:2014:47, paragraph 30).

16 Judgment of 23 May 1996, *O'Flynn* (C-237/94, EU:C:1996:206, paragraph 20).

17 See, to this effect, judgment of 7 March 2017, *RPO* (C-390/15, EU:C:2017:174, paragraph 42 and the case-law cited); of 26 June 2018, *MB (Change of gender and retirement pension)* (C-451/16, EU:C:2018:492, paragraph 42); and of 22 January 2019, *Cresco Investigation* (C-193/17, EU:C:2019:43, paragraph 42).

57. Next, as to the *specific* purpose of the exemption, the referring court explains that, by subjecting the access to the profession of lawyer to the conditions discussed in the present case, that exemption aims at guaranteeing the effective defence of the litigants and, by the same token, good administration of justice.

58. If that objective is indeed examined, as some of the instances referred to in this Opinion suggested *in concreto*,[18] then I again fail to see the absence of structural comparability between French officials and EU officials. What is said to matter is the evidence of practice of French law, not its presumption. If, however, it would be simply presumed that only a French official has knowledge of French law, without that being in any way examined, such an assumption would, while generating issues of its own, still not deny the inherent comparability in view of the stated aim of the specific derogation: making sure that a person benefiting from the derogation in fact possesses skills necessary for the exercise of the profession of lawyer.

59. However, in any case, this discussion demonstrates two issues. First, such considerations in fact pertain already to the justification of a specific condition, not to overall comparability. That comparability is normally perceived of rather broadly, precisely in order not to remove the discussion from the level of justification to the level of comparability, with the arguments under both headings being largely of the same nature.[19] Second, the legislative choices made by a Member State within such a context cannot be considered determinative. If they were, the categories conceived of in national law would then lead to the exclusion of comparability at the European level, thus excluding any review.[20]

60. In the light of those considerations, I cannot but reaffirm that the three conditions stated by the referring court triggering the application of Article 98(4) of Decree No 91-1197 indeed generate indirect discrimination favouring French nationals with regard to access to the profession of lawyer in France.

61. Second, I further agree with the appellant and the Commission that those conditions also amount to an obstacle to access to the profession of lawyer in France.

62. The reach of Articles 45 and 49 TFEU is not limited to instances of direct or indirect discrimination on the basis of nationality. Those provisions also preclude measures which, albeit applicable without discrimination on grounds of nationality, are 'liable to hinder or render less attractive the exercise by European Union nationals of the fundamental freedoms guaranteed by the Treaty'.[21]

63. The application of Article 98(4) of Decree No 91-1197 is liable to prevent or deter the persons wishing to exercise their freedom of movement or establishment from leaving their Member State of origin (or, for what is relevant here, the EU civil service) to take up employment or establish themselves as lawyers in France.

18 Above, points 11 to 12 and 24 of this Opinion.

19 See also my Opinion in *Hornbach-Baumarkt* (C-382/16, EU:C:2017:974, point 131), demonstrating how in the traditional analysis by the Court in the context of the four freedoms, the same arguments are essentially being discussed in the assessment of comparability (if discussed separately) and justification (proportionality).

20 See, my Opinion in *MB* (C-451/16, EU:C:2017:937, point 47), stressing the circularity resulting in an effective impossibility of any review if the categories as established by national legislation were to be seen as conclusive for the assessment of comparability at the EU level.

21 See, for example, judgments of 7 May 1991, *Vlassopoulou* (C-340/89, EU:C:1991:193, paragraph 15); of 5 February 2015, *Commission* v *Belgium* (C-317/14, EU:C:2015:63, paragraph 22); or of 20 December 2017, *Simma Federspiel* (C-419/16, EU:C:2017:997, paragraph 35 and the case-law cited). For a summary of the case-law in this regard, see also my Opinion in *Krah* (C-703/17, EU:C:2019:450, points 53 to 85).

64. The conditions of application of Article 98(4) of Decree No 91-1197 concerning membership of the French civil service, territoriality of their professional experience, and practice of French law thus also constitute a restriction to the free movement of workers and to the freedom of establishment pursuant to Articles 45 and 49 TFEU.

2. Justification

65. Regardless of whether the conditions at issue would be examined as indirect discrimination or as an obstacle to free movement, it is in any event necessary to verify whether they are capable of being justified by one of the legitimate aims listed in the Treaty or by overriding reasons in the public interest. Furthermore, the regime at issue must be appropriate for ensuring the attainment of that objective and must not go beyond what is necessary to attain it. [22]

66. It has been suggested that the aim pursued by the exemption at issue is the effective defence of the rights of litigants and good administration of justice. In that respect, and as the referring court notes, the protection of consumers, including recipients of legal services and the proper administration of justice, are objectives that feature among those which may be regarded as overriding requirements in the public interest capable of justifying a restriction on the fundamental freedoms. [23]

67. I entirely agree. I also note that none of the parties contest the legitimacy of such objectives which are certainly capable of justifying measures and conditions restricting access to the profession of lawyer in a Member State.

68. That being said, it remains to be examined whether the conditions at issue meet the test of proportionality which requires verifying the relationship between the *stated aims* and the *means chosen* for their attainment. In that context, it is rather important to clarify that (i) protection of consumers *qua* recipients of legal services, as well as (ii) the sound administration of justice in a case like the present one, essentially boil down to the issue of relevant experience which should then allow somebody wishing to practise law in a Member State to be reasonably and independently operational within that system. After all, the triggering of the exemption in question grants applicants a waiver from the required initial legal training and the final examination at its end.

69. Thus, in what follows, I shall endeavour to carry out a verification in respect of each of the three conditions at issue, as stated by the referring court: can such a condition be said to be both appropriate and necessary with regard to the stated aim of making sure that the persons wishing to avail themselves of the exemption at issue have an appropriate amount of relevant experience for the profession of lawyer?

(a) Being a member of the French Civil Service

70. As noted above in points 27 and 28 of the present Opinion, the exact scope of the condition relating to membership of the French civil service is subject to a different interpretation.

71. The referring court states that that condition indeed requires membership of the French civil service to be understood as different from any other civil service, whether European or national.

22 See, for example, judgments of 31 March 1993, *Kraus* (C-19/92, EU:C:1993:125, paragraph 32 and the case-law cited); of 12 September 2013, *Konstantinides* (C-475/11, EU:C:2013:542, paragraph 50); or of 13 July 2016, *Pöpperl* (C-187/15, EU:C:2016:550, paragraph 29).

23 As regards justification of restrictions to the freedom to provide services, see judgment of 18 May 2017, *Lahorgue* (C-99/16, EU:C:2017:391, paragraph 34 and the case-law cited). See also judgment of 12 December 1996, *Reisebüro Broede* (C-3/95, EU:C:1996:487, paragraph 38 and the case-law cited), and of 25 July 1991, *Säger* (C-76/90, EU:C:1991:331 paragraph 16).

72. The French Government, on the other hand, contests that interpretation. In its view, that condition is to be construed broadly so as to also include European or national civil services beyond the French one. The AD category of European Commission officials could be, in the view of that government, also covered by the concept of persons treated as category A officials (*personnes assimilées*), appearing in the text of Article 98(4) of Decree No 91-1197. The French Government explained at the hearing that there is no clear definition of the latter category. It is only apparent that it excludes officials of categories B and C, while it arguably includes officials which cannot be classified in one of the categories A, B, and C, such as prison administration officials or military officials.

73. In the context of the present case, it would appear that the interpretation embraced by the decision of the Council of the Paris Bar was the one suggested by the referring court. By contrast, the decision of the Cour d'Appel de Paris (Court of Appeal, Paris) was in line with what the French Government is suggesting: the fact that the appellant was clearly not a member of the French civil service did not prevent that court from carrying out an *in concreto* assessment of her previous experience.

74. It is not the task of this Court to decide on the interpretation of national law. However, I would just note three points.

75. First, should the interpretation eventually embraced be the narrow one, *de facto* suggesting that membership of the French civil service leads to an automatic granting of the exemption without a genuine *in concreto* examination of the condition of the practice of any French law relevant for the profession of lawyer, such a condition would in my view *not be appropriate* to reach the stated aim. In view of the amount of civil servants falling within category A, and the varied and sometimes narrow job description which is likely to be connected to working in certain offices, it would indeed be very difficult to assume that all of those persons would automatically acquire the necessary practice and skills for the profession of lawyer, in particular for general and independent practice at the bar in a self-employed capacity. An automatic granting of the exemption based on mere membership of the French civil service would therefore be over-inclusive, to say the least, in the light of the pursued aims.

76. Second, the Council and the President of the Paris Bar state that there indeed is no automaticity in the way in which the exemption is granted, and that all applications for the exemption are subjected to an *in concreto* analysis. I note that all parties agreed at the hearing that, as a matter of fact, an *in concreto* assessment should indeed be carried out. A divergence of views nonetheless persisted as to *what* exactly ought to be examined *in concreto*, which will be dealt with below with regard to the third condition.

77. However and in any case, I consider that even if any automaticity is excluded, the condition of membership of the French civil service goes beyond what is necessary in the light of the aim stated above. That aim is to make sure that the persons wishing to avail themselves of the exemption have relevant, practical knowledge of French law, so that they can practise the law. But to equate that aim with membership of the French civil service is, as already suggested, *over-inclusive* of French civil servants and considerably *under-inclusive* of anybody who is not a French civil servant. It is rather clear to me that practice and knowledge of French law can also be acquired elsewhere than in the French civil service. It is certainly not to be excluded that there are some officials of the European Commission who could have worked on matters of French law, or even engaged in litigation before the French courts on behalf of their employer.

78. Within that latter perspective, the condition related to membership of the French civil service would restrict the freedoms at issue beyond what is necessary to the extent that it would exclude applicants who are not members of the French civil service but who could have effectively acquired relevant practice. [24]

79. Third, the problem with regard to the first condition set out by the referring court nonetheless entirely disappears if, as the French Government suggests, the condition at issue is interpreted broadly as also including officials of the EU civil service, to the extent that they can be considered as 'other persons treated as category A officials'. That would mean that such persons would not be automatically excluded from consideration for the purpose of the exemption at issue and that, also with regard to their qualifications, an *in concreto* assessment of their previous practice could be carried out.

80. Thus, I reach the interim (and indeed rather conditional) conclusion that Articles 45 and 49 TFEU preclude the condition of membership of the French civil service to which the exemption from professional training and the certificate of competence of the profession of lawyer under Article 98(4) of Decree No 91-1197 is subject, to the extent that the practical application of that condition does not allow for the verification of the requisite practice of (national) law on the part of persons who are not members of the French civil service.

(b) Territoriality condition

81. As regards the territoriality condition, I understand that that condition is applied on an independent basis and must be fulfilled *cumulatively* together with the two other conditions. I further understand that that condition is construed as requiring the requisite practice of French law to have been acquired by the applicant while *professionally residing* in France. In other words, the requisite experience can never be acquired if the applicant's public employer is seated outside French territory even if, as a matter of fact, the applicant could actually practise French law, whether that be before the French courts, and thus on French territory, or otherwise working on matters of French law.

82. If that is indeed the case, I consider that such a condition presents the same issues as those potentially identified in respect of the condition related to membership of the French civil service as explained above. [25] The problem is the inherent automaticity which simply misses the stated aim.

83. That observation is further borne out by the last limb of Article 98(4) of Decree No 91-1197 from which it follows that the exemption at issue can be granted, at least on the face of the text of that provision, to applicants relying on experience in an international organisation. It is not excluded that, while working for an organisation such as UNESCO or OECD, which have their seats in France, one can be dealing with matters of French law and be involved in litigation before French courts. That said, should the guarantee of the exemption in those cases be automatic (and, moreover, possibly limited to members of the French civil service seconded to such organisations), the objectives pursued by the conditions at issue can hardly be attained.

24 See to that effect for example, judgments of 7 May 1991, *Vlassopoulou* (C-340/89, EU:C:1991:193, paragraph 15); of 13 November 2003, *Morgenbesser* (C-313/01, EU:C:2003:612, paragraph 62 and the case-law cited); of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, paragraph 36 and the case-law cited); and of 17 December 2009, *Rubino* (C-586/08, EU:C:2009:801, paragraph 34). See also judgment of 12 May 2005, *Commission* v *Italy* (C-278/03, EU:C:2005:281, paragraph 14 and the case-law cited).

25 Moreover, the Commission raises doubt as to whether the territoriality condition is indeed required from members of the French civil service exercising their function outside of the French territory. It refers, in that context, to the decision of the Cour d'appel de Paris (Court of Appeal, Paris) of 12 May 2016, No 15/15468, holding that discrimination cannot stem from a distinction made between the members of the French civil service and international officials since the two statuses reflect different skills.

84. Thus, I reach the next interim (and again somewhat conditional) conclusion that Articles 45 and 49 TFEU preclude the condition of territoriality to which the exemption from professional training and the certificate of competence of the profession of lawyer under Article 98(4) of Decree No 91-1197 is subject.

(c) Practice of French law

85. I understand that the condition related to the practice of French law links to the requirement of 'legal work performed' which features in the text of Article 98(4) of Decree No 91-9711 ('*activités juridiques*' in the French original).

86. In this regard, one cannot but stress that the importance of practice and knowledge of national law for the purpose of exercising the profession of lawyer has, in principle, been acknowledged in the Court's case-law.[26] Thus, a requirement to have obtained a fair amount of relevant legal experience, in order to be exempted from the normal requirement of practice prior to enrolment at the bar, would in principle be an appropriate and necessary restriction.

87. However, the situation is not that clear in the present proceedings. As a matter of fact, it is the exact subject matter of the previous legal practice that is required under the relevant national law which remains somewhat blurry, both with regard to its substance and procedure.

88. First, while making all the allowances for the inherent flexibility needed for processing applications from people from all walks of life, what exactly is required under the heading of 'legal work performed' remains unclear.

89. The intuitive reading of the concept of 'legal work' could be in opposition to 'administrative work'. But as follows from the explanation provided, in particular by the Council and the President of the Paris Bar, it is in fact legal work of a certain quality that is required which should enable one to ascertain that the professional experience has effectively prepared the applicant for the exercise of the profession of lawyer.

90. However, the text of Article 98(4) of Decree No 91-1197 does not refer to the practice of *national law*. That is logically the case when it comes to applicants who are category A officials and who have practised law in international organisations or who have mainly or also practised other fields of law, such as EU law or international law, while working in France. Indeed, it follows from a discussion that unfolded at the hearing that practice of EU law may (or even must) be taken into account to that end, even if it remains unclear to what extent that practice can compensate for the lack of practice in national law.

91. I am also unclear about whether the exercise of professional activities in *any field of law* is sufficient to meet the requisite standard. Again, some rather inconclusive discussion unfolded in that regard at the hearing, including examples of persons who might have worked only in a very narrow field of law for the entire eight-year period,[27] and comments on whether a broader range of practice is in fact required.

26 See judgments of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, paragraph 46), and of 22 December 2010, *Koller* (C-118/09, EU:C:2010:805, paragraph 39).

27 In that respect, the appellant pointed to judgments of the referring court stating, in the context of the exemption under Article 98(3) of Decree No 91-9711 for in-house lawyers, that a variety of activities in different fields of law cannot be required. See, Cass. 1ère Civ, decision of 13 March 1996, pourvoi No 94-13.856, Bulletin 1996 I No 131 p. 93; Cass. 1ère Civ, decision of 26 January 1999, pourvoi No 96-14.188, *non publié au bulletin*; Cass. 1ère Civ, decision of 11 February 2010, pourvoi No 09-11.324, *non publié au bulletin*.

92. It is equally not clear as to whether some *experience in litigation* before French courts must be shown and to what extent or whether other (that is non-litigation) experience suffices. I note that the Council and the President of the Paris Bar seem to embrace the first option, but the case-law examples provided in the present proceedings are neither explicit nor otherwise conclusive in that respect.[28]

93. It is then only in this context that a useful answer to the referring court's first question may be provided.[29] If, as to the substance of the practice required, national authorities tasked with applying Article 98(4) of Decree No 91-1197 were to consistently require from all the applicants experience in French law either in the sense of proven litigation experience before French courts, or limited to areas of law closely connected to such areas, then excluding EU law only practical experience would be entirely logical. However, if, by contrast, *any practice* of national law is accepted, in virtually every field of national law, including those areas that are rather remote from any relevant litigation practice, then there is no reason to exclude practice in EU law only from areas of relevant experience.[30]

94. Second, as regards the process of verification of the condition relating to the practice of French law, the Council and the President of the Paris Bar and the French Government explain that it is done *in concreto*, on a case-by-case basis. Each application is received first by a lawyer employed by the Paris Bar whose duty is to verify whether the file is complete, invite the applicant to complete it if necessary, and to prepare a briefing note. The application is then transferred to a committee composed of members and former members of the Bar and is attributed to one of them who interviews the applicant and submits his or her opinion on the matter back to the committee. The latter either accepts the application or, if that proves impossible, transmits the file to an administrative body before which the applicant can be heard. That administrative body then takes a formal decision on the matter which is subject to judicial review. According to the Council and the President of the Paris Bar, such an individual and detailed assessment excludes all automaticity. To support that statement, that party referred at the hearing to several examples of rejection decisions of the Paris Bar concerning applicants who were unable to provide evidence of their legal activities which had been conducted in a constant, sufficient, direct or personal manner.[31]

95. I understand from the explanation provided especially at the hearing that the object of the *in concreto* assessment is to verify whether the applicant has engaged in 'legal work' as opposed to other work. In this respect, no party seems to contest that such *in concreto* assessment does indeed take place, although, as already stated and the above-described examination procedure notwithstanding, it remains somewhat vague with regard to its exact scope.[32]

28 Moreover, the appellant referred to an opinion of 18 January 2018 of the Conseil national des barreaux (National Bar Council) and Commission Règles et usages (Rules and Practices Commission), that does not seem that univocal in this respect. That document states that: 'The Bar having received the application for registration is to investigate what were the effectively exercised activities, based on proof of the professional legal work under the form of consultations, drafting *or* dealing with litigation files. The proof to be provided by the applicant is in principle the certificate issued by the employer or former employees.' My Emphasis with regard to the disjunctive 'or'.

29 Above, point 38 of this Opinion.

30 Put bluntly with the help of a hypothetical example, should it be possible for say a tax official from Saint-Claude in Jura who has eight years of experience working on VAT files only, without ever having set foot in a French court to plead on behalf of the State, to benefit from the Article 98(4) of Decree 91-1197 exception, because he would be seen as performing 'legal work', then the same should certainly be possible for a Commission official working exclusively on EU law matters, without ever pleading in French courts. That is so simply because in view of the *stated aim* for such a limitation (above, points 68 and 69 of this Opinion), both of these instances are equally close (or rather equally remote) from having any relevant experience in litigation in French law.

31 In that respect, the Council and the President of the Paris Bar referred to Cass. 1ère Civ, decision of 22 January 2014, pourvoi No 12-26.622, FR:CCASS:2014:C100056, and Cass. 1ère Civ, decision of 8 December 2009, pourvoi No 08-70.088, *non publié au bulletin*.

32 See above, points 10 and 23, which would indicate that with regard to the appellant in the main proceedings, that assessment appeared to have been limited to the statement that she was *in concreto* not a member of the French civil service.

96. In sum, the condition of relevant practice of French law is, in general, a condition that could certainly be both appropriate and necessary to the stated objectives. I advisedly stress the *French* law: if one wishes to practice in a legal system and wishes to have dispensation from the generally applicable requirement for admission to the bar in that system which relates to the requisite training and its successful passing in the form of a final exam, then it is both entirely appropriate and necessary to require a reasonable degree of practical experience with that system of law.

97. However, whatever the type of requirement laid down by a system in that regard, both the conditions and their application must be set in a foreseeable and consistent manner for all candidates seeking admission. That latter element brings me to a final, transversal point of this Opinion, which needs to be considered separately.

3. Consistent and foreseeable conditions

98. The context of this case is somewhat particular. As already set out in the opening preliminary remarks,[33] and further outlined in the discussion which followed, the conditions that appear to be applicable under Article 98(4) of Decree No 91-1197 are not only somewhat varied, but also have a rather limited textual basis in that provision. Moreover, as the Commission pertinently stated at the hearing, all the conditions at issue seem to be applied with a fair degree of flexibility.

99. The three conditions examined in the present case are a case-law construct. They raise issues of consistency and foreseeability of their application, in particular when examined through the lenses of the limitations to the freedoms guaranteed under the Treaty that they constitute. With regard to the requirement of *consistency*, the Court has held that justification of the restrictions to freedoms guaranteed by the Treaties must indeed pursue the stated objective in a consistent and systematic manner.[34] As regards the requirement of *foreseeability*, the latter is of course enhanced when the respective restrictions are clearly defined by generally applicable norms.

100. I am certainly not suggesting that an appropriate degree of consistency and foreseeability cannot be achieved by case-law and must only be brought about by legislation. Indeed, for example in the more stringent context of limitations of rights to be only 'prescribed by law', the European Court of Human Rights ('the ECtHR') has accepted that such a restriction must not necessarily be defined by legislation. It can also be imposed by virtue of case-law. Yet, according to the ECtHR, the expression 'prescribed by law' nevertheless requires that the law must be 'adequately accessible' and that 'a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct'.[35] Indeed, 'the legal norms upon which the interference is based should be sufficiently accessible, precise and foreseeable in their application'. In this context, 'a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities'.[36]

33 In particular, see above in point 34 of this Opinion.

34 See, for example, judgments of 6 November 2003, *Gambelli and Others* (C-243/01, EU:C:2003:597, paragraph 67); of 10 March 2009, *Hartlauer* (C-169/07, EU:C:2009:141, paragraph 55 and the case-law cited); of 18 May 2017, *Lahorgue* (C-99/16, EU:C:2017:391, paragraph 31 and the case-law cited); of 29 July 2019, *Commission* v *Austria (Civil engineers, patent agents and veterinary surgeons)* (C-209/18, EU:C:2019:632, paragraph 94 and the case-law cited); and of 18 June 2020, *Commission* v *Hungary (Transparency of association)* (C-78/18, EU:C:2020:476, paragraph 76 and the case-law cited).

35 ECtHR, 26 April 1979, *The Sunday Times v. The United Kingdom (No 1)*, App. No 6538/74, (CE:ECHR:1980:1106JUD000653874, §§ 47 to 49 (in the context of Article 10(2) ECHR and the limitation to the freedom of expression)). See also, in the context of Article 52(1) of the Charter of Fundamental Rights of the European Union and commenting upon the relevant case-law of the ECtHR, Opinion of Advocate General Cruz Villalón in *Scarlet Extended* (C-70/10, EU:C:2011:255, points 94 to 100).

36 ECtHR, 11 June 2020, *Markus v. Latvia*, App. No 17483/10, (CE:ECHR:2020:0611JUD001748310, § 66 and the case-law cited (in the context of a criminal sanction and restriction to the right of property)).

101. That being said, there are instances in which this Court has insisted on stricter requirements as to the foreseeability of the applicable rules.[37] However, leaving those instances concerning deprivation of liberty in various contexts aside, where naturally higher standards must apply,[38] the same is not necessarily true with regard to the definition of the conditions of access to a profession. Thus, while it can certainly be accepted that such standards would be further nuanced in case-law, a base line of foreseeability (thus accessibility and precision) must still be respected.[39]

102. Assessed against these yardsticks, I must admit that I find it rather difficult to see how the conditions discussed in the present case could meet those requirements. I find it impossible to overlook the considerable dissonance there is between the written rules as stated by Article 98(4) of Decree No 91-1197, on the one hand, and the application of those rules through the conditions discussed in the present case, on the other hand, combined with many unclear aspects as to what those conditions in fact mean and how are they applied.

103. I naturally acknowledge the considerable degree of discretion that the Member States have when defining the conditions for access to a regulated profession, such as the profession of lawyer, including the exemptions from those conditions, so as to make sure that only persons offering the guarantee of the requisite skills may have access to it.

104. Equally, I do not intend to deny the power of the Member States to lay down, where appropriate, rather strict criteria in terms of experience and knowledge of national law, as the French Government emphasised at the hearing, and to enforce them so as to effectively enhance the protection of the rights of litigants and the sound administration of justice.

105. Thus, the observations made in this section and throughout the entire Opinion are in no way inspired by a belief that the widest possible access to the national bars should be granted, including to persons who do not meet the requisite standards and who cannot thus provide the necessary guarantees in relation to the protection of the rights of litigants and the good administration of justice. Rather the contrary, in fact. I believe that a Member State is fully within its rights to demand a rather strict standard of professional experience for admission to the national bar, which includes, if that Member State so chooses, insisting not only on the effective practice of *national* law, but even on practical experience with *litigation* and appearance before national courts.

106. The bottom line of this Opinion is a different one: however strict a Member State chooses to be, it must do so in a coherent and transparent manner, subjecting all candidates, citizens as well as non-citizens, to the same set of foreseeable conditions that will be applied in the same way. A Member State may decide to be lenient or strict, but it must do so *indiscriminately*. A Member State cannot, however, through a system of hardly warranted presumptions, that have only a limited connection to the stated aim of relevant experience (which is in itself nationality blind), effectively operate a system that, on all facts brought before this Court, appears to be rather lenient with its own citizens, but much stricter, or even exclusionary, with non-citizens.

37 Judgment of 15 March 2017, *Al Chodor* (C-528/15, EU:C:2017:213). See also judgment of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 46).

38 Judgment of 15 March 2017, *Al Chodor* (C-528/15, EU:C:2017:213 paragraphs 42 and 43), stating that 'only a provision of general application could meet the requirements of clarity, predictability, accessibility and, in particular, protection against arbitrariness'.

39 See by analogy for example, judgments of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 88); of 11 April 2019, *Cobra Servicios Auxiliares* (C-29/18, C-30/18 and C-44/18, EU:C:2019:315, paragraphs 45 to 46 and the case-law cited); of 7 October 2019, *Safeway* (C-171/18, EU:C:2019:839, paragraph 25 and the case-law cited); and of 19 December 2019, *GRDF* (C-236/18, EU:C:2019:1120, paragraph 42 and the case-law cited).

107. Thus, while stressing once again the scope of discretion of the Member States in this area, that discretion must be exercised in a way which makes those conditions compliant with the requirements stated above, so as to provide for clearly stated criteria which allow the applicants to know what is expected of them and on what basis and according to what conditions their application will be examined and decided upon.

V. Conclusion

108. I suggest that the Court reply to the Cour de cassation (Court of Cassation, France) as follows:

Articles 45 and 49 TFEU preclude the conditions of membership of the French civil service and of territoriality to which the exemption from professional training and the certificate of competence of the profession of lawyer is subject under Article 98(4) of Decree No 91-1197 to the extent that the practical application of those conditions does preclude verification of the relevant practice of national law on the part of members of the civil service of the European Commission.

In any case, Articles 45 and 49 TFEU preclude making access to a regulated profession in a Member State subject to conditions that are not based on consistent and foreseeable criteria, which cannot be reasonably ascertained ex ante by all the interested applicants.