Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

17 December 2020*

(Reference for a preliminary ruling – Free movement of persons – Freedom of establishment – Access to the profession of lawyer – Exemption from training and diploma requirements – Grant of the exemption – Conditions – National legislation providing for an exemption for category A civil servants and former category A civil servants or for persons treated as such with experience in the professional practice of national law, on national territory, in the national civil service of the Member State concerned or in an international organisation)

In Case C-218/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 20 February 2019, received at the Court on 12 March 2019, in the proceedings

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,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen (Rapporteur), C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 17 June 2020,

after considering the observations submitted on behalf of:

– Ms A. Onofrei, by J. Jourdan and F. Abouzeid, avocats,

* Language of the case: French.

– the conseil de l'ordre des avocats au barreau de Paris and the bâtonnier de l'ordre des avocats au barreau de Paris, by H. Farge and C. Waquet, avocates,

– the French Government, by A. Daniel and A.-L. Desjonquères, acting as Agents,

– the Greek Government, by M. Tassopoulou and D. Tsagkaraki, acting as Agents,

– the European Commission, by B.-R. Killmann, É. Gippini Fournier and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 45 and 49 TFEU in the light of the conditions laid down by national legislation for access to the profession of lawyer.

2 The request has been made in proceedings between Ms Adina Onofrei, on the one hand, and, on the other, the conseil de l'ordre des avocats de Paris (Council of the Paris Bar, France), the bâtonnier de l'ordre des avocats de Paris (President of the Paris Bar) and the procureur général près la cour d'appel de Paris (Public Prosecutor at the Court of Appeal, Paris, France), concerning her request for admission to the Bar.

Legal framework

French law

3 Regarding access to the profession of lawyer, Article 11 of loi n° 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), in the version applicable to the dispute in the main proceedings ('Law No 71-1130'), provides:

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

1. Be French, a national of a Member State of the European Union or of 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 [on the recognition of professional qualifications (OJ 2005 L 255, p. 22)], 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 by joint decision of the Garde des sceaux (Keeper of the Seals), Minister for Justice and the Minister responsible for universities;

3. Hold the certificate of competence for the profession of lawyer, subject to the regulatory provisions referred to in paragraph 2 …

…'

4 With regard to those legislative provisions, Article 98 of décret n° 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), in the version applicable to the dispute in the main proceedings, ('Decree No 91-1197'), provides:

'The following are exempt from the theoretical and practical training and from the certificate of competence for the profession of lawyer:

…

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, a public service or an international organisation;

…'

5 According to Article 5a of loi n° 83-634, du 13 juillet 1983, portant droits et obligations des fonctionnaires (Law No 83-634 of 13 July 1983 on the rights and obligations of public servants), in the version applicable to the dispute in the main proceedings ('Law No 83-634'), 'nationals of Member States of the European Community or of another State which is a party to the Agreement on the European Economic Area other than France shall have access, under the conditions provided for in the general regulations, to professions, career posts and roles. However, they shall not have access to roles the remit of which is not separable from the exercise of sovereignty or which involves direct or indirect participation in the exercise of public powers of the State or the other public bodies.

…'

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

6 Ms Onofrei, an official of the European Commission, applied for admission to the Paris Bar under the exemption provided for in Article 98(4) of Decree No 91-1197.

7 It is apparent from the case file before the Court that, after observing that Ms Onofrei, who holds a Master's degree, a diplôme d'études approfondies (certificate of advanced study, DEA) and a doctorate in law awarded by French universities, met the requirement relating to qualifications laid down in Article 11(2) of Law No 71-1130, the Council of the Paris Bar nevertheless rejected her application on the ground that, as she had never carried out her duties in an administration or public service covered by the regulations governing the French civil service and had never been seconded by a French administration or French public service to an international organisation, she did not satisfy the requirements provided for that access by way of exemption to the profession of lawyer.

8 The Cour d'appel de Paris (Paris Court of Appeal) confirmed that decision. It based its reasoning on the premiss that the intention to ensure that lawyers have satisfactory knowledge of national law is designed to guarantee the full, relevant and effective exercise of litigants' rights of defence as, even though that law includes many European rules, it nevertheless has its own specific nature and is not limited to those rules. Next, observing that Ms Onofrei had carried out duties at the Commission in the field of EU law relating to the internal market, State aid, anticompetitive practice and the new European rules on better law-making, it concluded that she had not shown that she had practised any national law.

9 An appeal relating to, inter alia, the failure to have regard to the free movement of workers and the freedom of establishment was brought before the Cour de Cassation (Court of Cassation, France); that court is uncertain whether the refusal to admit Ms Onofrei to the Paris Bar is compatible with EU law.

10 Examining national law, it states, first of all, that it follows from Law No 71-1130 that a lawyer can exercise his or her profession in either a self-employed or an employed capacity. Next, it observes that Article 11 of that law makes access to that profession subject to the condition that the candidate has carried out certain duties or activities in France and that Article 98(4) of Decree No 91-1197 can be regarded as making the exemption from the training and diploma requirements, in respect of that access, subject to (i) belonging to the French civil service alone and (ii) knowledge of national law 'of French origin'. That court infers that the national measure, consisting of a combination of that legislation, can be regarded as introducing a restriction on the free movement of workers or on the freedom of establishment.

11 The referring court takes the view that it must first be determined whether that measure applies without distinction to nationals of the host Member State or the Member State of establishment and to nationals of other Member States, or whether it is discriminatory.

12 In that regard, that court observes, in particular, that it follows from Article 5a of Law No 83-634 that, with the exception of certain roles relating to the exercise of sovereignty or public powers, nationals of the EU Member States have access to the French civil service, with the result that the exemption in question in the main proceedings is subject to belonging to an administration which, albeit national, is open, for the most part, to all nationals of the Member States.

13 However, according to the referring court, given that the benefit of that exemption relies on the criteria relating to the exercise of certain duties or activities in France, knowledge of national law and belonging to the French civil service, it follows that, in actual fact, that exemption could be granted only to members of the French administration who have carried out their professional activity on French territory, the large majority of whom have French nationality, and could not be granted to EU civil servants, even if the latter may have performed, outside French territory, legal work in the field of national law 'of French origin'. Consequently, the national legislation at issue in the main proceedings could be regarded as introducing indirect discrimination on the basis of nationality. This presupposes that the French civil service and the EU civil service can be regarded as objectively comparable entities.

14 Finally, the referring court concludes that, in any event, in order for the restrictions under consideration to be capable of being justified by overriding reasons in the public interest or on grounds of public policy, public security or public health, they must be appropriate for ensuring the attainment of their objective and must not go beyond what is necessary in order to attain it. For those purposes, it emphasises that the national legislation at issue in the main proceedings

does not require the candidate applying for exemption from the training and diploma requirements to have knowledge of any matter of national law specifically relating to the organisation of the national courts and tribunals or procedures before them.

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

'(1) Does the principle that the [EEC Treaty], now, after amendment, the [FEU Treaty], 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?'

Consideration of the questions referred

16 Regarding the 'exemption from the training and diploma requirements laid down, in principle, for entry to the profession of lawyer' mentioned in the two questions referred, the referring court specified, at the Court's request, that that expression refers to the exemption, laid down in Article 98(1) of Decree No 91-1197, from the theoretical and practical training provided by the regional centres for professional training and from the certificate of competence to exercise the profession of lawyer.

17 Regarding the condition that the exemption from theoretical and practical training and from the certificate of competence to exercise the profession of lawyer, in order to access the profession of lawyer, is intended, according to the wording of the second question, to apply to certain members of the French civil service, the French Government disputes that interpretation of the national legislation and maintains that that condition must be interpreted broadly so as to include the European civil service and the civil services of other Member States in addition to the French civil service.

18 It should be noted that, in the context of a reference for a preliminary ruling, the Court is only empowered to rule on the interpretation or validity of EU law in the light of the factual and legal situation as described by the referring court, in order to provide that court with such guidance as will assist it in resolving the dispute before it (see judgment of 6 July 2017, *Air Berlin*, C-290/16, EU:C:2017:523, paragraph 41).

19 In those circumstances, it is appropriate to examine the second question on the basis of the referring court's premiss that the relevant national legislation in the context of the dispute in the main proceedings provides that the exemption from theoretical and practical training and the certificate of competence to exercise the profession of lawyer, in order to access the profession of lawyer, is intended to apply to certain members of the French civil service alone.

20 Moreover, as observed by the Advocate General in point 36 of his Opinion, it is apparent from the order for reference and from the observations submitted to the Court that the expression 'knowledge of French law' which features in the wording of the first question should rather be understood in the sense of 'practice of French law'. According to the referring court, it follows from a line of case-law of the Conseil constitutionnel (Constitutional Council, France) that it is precisely by the carrying-out of legal work or legal duties during a sufficient period on national territory that the legislature intended to guarantee that the persons exercising the profession of lawyer had skills in French law.

21 Thus, by its questions, which should be examined together, the referring court asks, in essence, whether Articles 45 and 49 of the Treaty on the Functioning of the European Union must be interpreted as precluding national legislation which restricts an exemption from the requirements of professional training and holding a certificate of competence to exercise the profession of lawyer laid down, in principle, for entry to the profession of lawyer, to certain members of the civil service of a Member State who have performed legal work in the field of national law in that capacity, in that Member State, in an administration or a public service or an international organisation, and which excludes from the scope of that exemption civil servants, members or former members of the EU civil service who have performed legal work in that capacity, in one or more fields of EU law.

22 It is thus apparent from the case file before the Court that, in order to benefit from that bridge for access to the profession of lawyer, whether in an employed or self-employed capacity, without undertaking the theoretical and practical training provided by the regional centres for professional training and from the certificate of competence to exercise the profession of lawyer, candidates must fulfil three cumulative conditions, namely (i) belonging to the French civil service, (ii) having worked in France in a public administration or an international organisation and (iii) having practised French law.

23 In that regard, it should be borne in mind that, in a situation such as that in the main proceedings, the performance of work in a regulated profession, ordinarily remunerated by either a client or the firm where the lawyer works, is covered by Article 49 TFEU. In so far as the remuneration may take the form of a salary, Article 45 TFEU may also apply (see, to that effect, judgment of 13 November 2003, *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 60).

24 In addition, it must be stated that, 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 that occupation and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications (judgments of 10 December 2009, *Peśla*, C-345/08, EU:C:2009:771, paragraph 34, and of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 48).

25 Since the conditions for access to the profession of lawyer of a person such as Ms Onofrei, who has not been authorised in any Member State to exercise that profession, have not, up to the present time, been harmonised at EU level, the Member States retain the power to define those conditions.

26 It follows that EU law does not preclude legislation of a Member State from making access to the profession of lawyer contingent on the possession of the knowledge and qualifications deemed to be necessary.

27 However, the Member States must exercise their powers in this area in a manner which respects the basic freedoms guaranteed by the FEU Treaty and provisions of national law adopted in that connection must not constitute an unjustified obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 45 and 49 TFEU (see, to that effect, judgment of 10 December 2009, *Peśla*, C-345/08, EU:C:2009:771, paragraph 35).

28 The Court has held that the free movement of persons would not be fully realised if the Member States were able to refuse to grant the benefit of those provisions to those of their nationals who had taken advantage of the provisions of EU law to acquire vocational qualifications in a Member State other than that of which they are nationals (see, by analogy, judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 27).

29 The same consideration applies where a national of a Member State who has studied and lived in another Member State has acquired, in a Member State other than those States, professional experience of which he intends to make use in the State in which he has studied and lived (see, by analogy, judgment of 6 October 2015, *Brouillard*, C-298/14, EU:C:2015:652, paragraph 27).

30 Thus, it must be stated that Articles 45 and 49 TFEU preclude, in principle, a national measure, related to the conditions under which professional experience – acquired in a Member State other than the Member State which enacted the measure – for the purpose of access to the profession of lawyer may be taken into account, where that measure is liable to hinder or make less attractive the exercise by EU nationals, including those of the Member State which enacted the measure, of the fundamental freedoms enshrined in the FEU Treaty.

31 However, since, as set out in paragraph 22 of the present judgment, the French legislation makes the bridge for access to the profession of lawyer, whether in an employed or a self-employed capacity, without completing the theoretical and practical training provided by the regional centres for professional training and obtaining the certificate of competence to exercise the profession of lawyer, contingent on the three cumulative conditions recalled in that paragraph, it does in fact constitute a measure liable to hinder or make less attractive the exercise by EU nationals, including those of the Member State which enacted the measure, of the fundamental freedoms guaranteed by the FEU Treaty such as those laid down in Articles 45 and 49 TFEU.

32 A restriction on the freedom of movement may be permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it (see, to that effect, judgments of 17 November 2009, *Presidente del Consiglio dei Ministri*, C-169/08, EU:C:2009:709, paragraph 42 and the case-law cited, and of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178 and the case-law cited).

33 The Council of the Paris Bar, the President of the Paris Bar and the French Government submit, in essence, that the national measure at issue in the main proceedings is justified by overriding reasons in the public interest relating to the protection of the recipients of legal services and the proper administration of justice. The French Government, more specifically, submits that the

conditions recalled in paragraph 22 of the present judgment, on which the French legislation makes access to the profession of lawyer contingent, with an exemption from the obligation to hold a certificate of competence to exercise the profession of lawyer, are suitable for securing the attainment of the objective pursued and are necessary for that purpose. Given that litigants themselves are not in a position to verify the quality of the services provided, it is therefore up to the legislature to create the conditions for a high quality of services, in order to guarantee their protection. Similarly, persons involved in the administration of justice who are trustworthy, trained and skilled must be available to the courts, in order for them to function optimally.

34 In that regard, it must be recalled that, first, the protection of consumers, in particular recipients of legal services provided by persons involved in the administration of justice, and, second, the proper administration of justice are objectives which feature among those which may be regarded as overriding reasons in the public interest capable of justifying restrictions both on the freedom to provide services (judgment of 18 May 2017, *Lahorgue*, C-99/16, EU:C:2017:391, paragraph 34) as well as, as observed by the Advocate General in point 66 of his Opinion, on the free movement of workers and the freedom of establishment (see, to that effect, judgments of 12 July 1984, *Klopp*, 107/83, EU:C:1984:270, paragraph 20, and of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 122).

35 As it is, the conditions subject to which the French legislation exempts, in particular, holders of a Master's degree, titles or diplomas recognised as equivalent for the purpose of exercising the profession of lawyer, from obtaining a certificate of competence to exercise that profession, namely the conditions of being a member of the French civil service, having worked in France as a member of that civil service and having practised French law, do not appear, as such, inappropriate for securing the attainment of the objectives of protecting the recipients of legal services and the proper administration of justice.

36 However, with regard to the proportionality of those conditions, it must be stated that, since they are intended to ensure, as is apparent from the case file before the Court, that the lawyer has satisfactory knowledge of national law for the purpose of safeguarding the objectives of protecting the recipients of legal services and the proper administration of justice, the conditions that candidates must be members of the French civil service and must have worked in France as a member of that civil service go beyond what is necessary in order to attain those objectives. In the present case, it cannot, a priori, be ruled out that a candidate who is a member of a civil service other than the French civil service, inter alia, the EU civil service, such as Ms Onofrei, has practised French law outside French territory in such a way as to have acquired satisfactory knowledge of it, a fortiori when, as is apparent from the order for reference, the national legislation at issue in the main proceedings does not require, for purposes of the examination of an application for exemption from the training and diploma requirements, that candidates should have knowledge of any field of national law specifically relating to the organisation of the national courts and tribunals or procedures before them.

37 As for the condition that candidates must have practised French law, it must be pointed out that a Member State is, in any event, entitled, when defining the knowledge necessary for exercising the profession of lawyer, to require satisfactory knowledge of national law, as the authorisation to exercise that profession includes the possibility of providing advice or assistance concerning national law (see, by analogy, judgment of 10 December 2009, *Peśla*, C-345/08, EU:C:2009:771, paragraph 46, and, to that effect, judgment of 22 December 2010, *Koller*, C-118/09, EU:C:2010:805, paragraph 39).

38 It was therefore open to the French legislature to define autonomously its quality standards in that respect and, therefore, to consider that satisfactory knowledge of French law, entitling a person to exercise the profession of lawyer, could be acquired by practising that law for a minimum of eight years.

39 In that context, a measure excluding the possibility that satisfactory knowledge of French law, entitling a person to exercise the profession of lawyer, could be acquired by practising EU law alone cannot be regarded as disproportionate in the light of the objectives set out in paragraph 35 of the present judgment, provided that it does not exclude account from being taken of the relevance of the fields in which the person concerned has worked for a public administration other than a French public administration.

40 More specifically, as observed by the Advocate General in points 77 and 78 of his Opinion, in the context of his or her work for a European institution, a civil servant or member may be called upon to carry out duties that are closely connected to the national law of Member States.

41 That being said, it should be emphasised that Articles 45 and 49 TFEU do not, in order to be given practical effect, require that access to a professional activity in a Member State be subject to lower requirements than those required of persons who have not exercised their freedom of movement (see, to that effect, judgment of 10 December 2009, *Peśla*, C-345/08, EU:C:2009:771, paragraph 50).

42 In the light of all of the foregoing considerations, the answer to the questions referred is that Articles 45 and 49 TFEU must be interpreted as:

– precluding national legislation which restricts an exemption from the requirements of professional training and holding a certificate of competence to exercise the profession of lawyer laid down, in principle, for entry to the profession of lawyer, to certain members of the civil service of a Member State who have performed legal work in that capacity in that Member State, in an administration or a public service or an international organisation, and which excludes from the scope of that exemption officials, members or former members of the EU civil service who have performed legal work in that capacity in an EU institution and outside French territory;

– not precluding national legislation which makes such an exemption contingent on the person concerned having performed legal work in the field of national law, and excluding from the scope of that exemption officials, members or former members of the EU civil service who have performed legal work in that capacity, in one or more fields of EU law, provided that that national legislation does not exclude account from being taken of legal work involving the practice of national law.

Costs

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

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

Articles 45 and 49 TFEU must be interpreted as:

– **precluding national legislation which restricts an exemption from the requirements of professional training and holding a certificate of competence to exercise the profession of lawyer laid down, in principle, for entry to the profession of lawyer, to certain members of the civil service of a Member State who have performed legal work in that capacity in that Member State, in an administration or a public service or an international organisation, and which excludes from the scope of that exemption officials, members or former members of the EU civil service who have performed legal work in that capacity in an EU institution and outside French territory;**

– **not precluding national legislation which makes such an exemption contingent on the person concerned having performed legal work in the field of national law, and excluding from the scope of that exemption officials, members or former members of the EU civil service who have performed legal work in that capacity, in one or more fields of EU law, provided that that national legislation does not exclude account from being taken of legal work involving the practice of national law.**

[Signatures]