



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

24 March 2022 *

(Appeal – Principles of EU law – Article 19 of the Statute of the Court of Justice of the European Union – Representation of the parties in direct actions before the Courts of the European Union – Lawyer representing the applicant as a third party – Requirement of independence – Lawyer working as an associate in a law firm – Article 47 of the Charter of Fundamental Rights of the European Union)

In Joined Cases C-529/18 P and C-531/18 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 August 2018 (C-529/18 P) and 10 August 2018 (C-531/18 P),

PJ, residing in Berlin (Germany), represented by J. Lipinsky and C. von Donat, Rechtsanwälte,

applicant,

the other parties to the proceedings being:

European Union Intellectual Property Office (EUIPO), represented by D. Botis and A. Söder, acting as Agents,

defendant at first instance,

Erdmann & Rossi GmbH, established in Berlin, represented by H. Kunz-Hallstein and R. Kunz-Hallstein, Rechtsanwälte,

intervener at first instance (C-529/18 P),

and

PC, established in Berlin, represented by J. Lipinsky and C. von Donat, Rechtsanwälte,

applicant,

the other parties to the proceedings being:

PJ, represented by J. Lipinsky and C. von Donat, Rechtsanwälte,

applicant at first instance,

* Language of the case: German.

European Union Intellectual Property Office (EUIPO), represented by D. Botis and A. Söder,
acting as Agents,

defendant at first instance,

Erdmann & Rossi GmbH, established in Berlin, represented by H. Kunz-Hallstein and
R. Kunz-Hallstein, Rechtsanwälte,

intervener at first instance (C-531/18 P),

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third
Chamber, J. Passer and F. Biltgen (Rapporteur), L.S. Rossi and N. Wahl, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

Judgment

- 1 By their appeals, PJ and PC seek to set aside the order of the General Court of the European Union of 30 May 2018 *PJ v EUIPO – Erdmann & Rossi (Erdmann & Rossi)* (T-664/16, ‘the order under appeal’, EU:T:2018:517), by which the General Court, first, dismissed as inadmissible the action brought against the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 18 July 2016 (Case R 1670/2015-4), relating to invalidity proceedings between Erdmann & Rossi GmbH and PJ, and, secondly, held that there was no longer any need to adjudicate on the action brought by PC.

Legal context

- 2 Under Article 19, paragraphs 1 to 4, of the Statute of the Court of Justice of the European Union, applicable to the General Court under the first paragraph of Article 53 thereof:

‘The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

The States, other than the Member States, which are parties to the Agreement on the European Economic Area [of 2 May 1992 (OJ 1994 L 1, p. 3)] and also the EFTA Surveillance Authority referred to in that Agreement shall be represented in [the] same manner.

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.'

3 Article 51(1) of the Rules of Procedure of the General Court provides:

'A party must be represented by an agent or a lawyer in accordance with the provisions of Article 19 of the Statute.'

Background to the dispute

4 The background to the dispute may be summarised as follows.

5 On 19 September 2011, the applicant, PJ, filed an application for registration of a European Union trade mark with the EUIPO relating to the word sign 'Erdmann & Rossi'.

6 The goods and services for which registration was sought are in Classes 12, 37 and 42 of the Nice Agreement Concerning the International Classification of Goods and Services for the purposes of the Registration of Marks of 15 June 1957, as revised and amended.

7 The mark was registered on 3 February 2012 under No 010310481.

8 On 26 March 2014, Erdmann & Rossi filed an application for a declaration that the contested mark was invalid on the basis of Article 52(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1) (now Article 59(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).

9 By decision of 29 June 2015, the Cancellation Division rejected the application for a declaration of invalidity in its entirety.

10 On 18 August 2015, Erdmann & Rossi filed a notice of appeal at EUIPO.

11 By decision of 18 July 2016, the Fourth Board of Appeal of EUIPO upheld the appeal and annulled the Cancellation Division's decision.

Procedure before the General Court and the order under appeal

12 By application lodged at the Registry of the General Court on 14 September 2016, PJ brought an action for annulment of the decision of 18 July 2016. The application was signed by Mr S. in his capacity as a lawyer.

13 By document lodged at the Court Registry on 31 March 2017, EUIPO raised a plea of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court.

14 By letter lodged at the Court Registry on 3 April 2017, EUIPO informed the Court that the contested mark had been registered in the register on 28 February 2017 for the benefit of its new proprietor, namely '[X] [GmbH Co. KG]' and, on 1 March 2017, following a correction by EUIPO, in favour of PC.

- 15 By letter lodged at the Court Registry on 8 May 2017, PJ asked, first, that a measure of organisation of procedure be adopted in relation to suspicions of tampering with the administrative file and, secondly, that the proceedings be stayed until the termination of criminal investigations against members of staff of EUIPO.
- 16 By document lodged at the Court Registry on 23 May 2017, Mr S. lodged, pursuant to Article 174 of the Rules of Procedure of the General Court, an application for replacement in favour of PC.
- 17 By document lodged at the Court Registry on 24 May 2017, PJ submitted his observations on EUIPO's plea of inadmissibility.
- 18 By the order under appeal, the General Court dismissed the action as inadmissible on the ground that the application initiating proceedings had not been signed by an independent lawyer.
- 19 In paragraph 51 of the order under appeal the General Court recalled that under the third and fourth paragraphs of Article 19 and the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court pursuant to the first paragraph of Article 53 thereof and, according to Article 73(1) of the Rules of Procedure of the General Court, parties, other than the Member States and institutions of the European Union, the EFTA Surveillance Authority, or the States which are parties to the Agreement on the European Economic Area (EEA), must be represented by a lawyer who is authorised to practise before a court of a Member State.
- 20 In paragraph 53 of the order under appeal the General Court recalled that the lawyer's role in the European Union legal order, which is derived from the legal traditions common to the Member States, and on which Article 19 of the Statute of the Court of Justice of the European Union is based, is that of collaborating in the administration of justice and being required to provide, in full independence and in the overriding interests of justice, such legal assistance as his or her client requires.
- 21 In paragraph 54 of the order under appeal, the General Court recalled, on the basis of the judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej v Commission* (C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 24 and the case-law cited), that the concept of 'independence' of lawyers is defined not only positively, namely by reference to professional ethical obligations, but also negatively, that is to say, by the absence of an employment relationship between the lawyer and his or her client. In paragraph 55 of the order under appeal, the General Court held that that reasoning applied with the same force in a situation in which a lawyer is employed by an entity connected to the party they represent or where a lawyer is bound to the applicant by a private-law contract.
- 22 After recalling, in paragraph 56 of the order under appeal, that the lawyer of a non-privileged party must not have any personal connection with the case in question or any relationship of dependence with his or her client of such a nature as to place him at risk of not being able to fulfil his vital role as an officer of the court in the most appropriate manner, the General Court concluded, in paragraph 57 of the order under appeal, that the purpose of the requirement of independence is not solely to preclude representation of a principal by employees or by those who are financially dependent on that principal, but constitutes a more general requirement, compliance with which must be examined on a case-by-case basis.

- 23 In the present case, the General Court noted, in paragraph 62 of the order under appeal, that PJ was cofounder and one of the two partners in law firm Z which he had instructed, through Mr S. who was acting on behalf of that firm, to represent him in the action before the General Court and that that law firm, a *société civile professionnelle* (professional partnership), had separate legal personality from PJ.
- 24 In paragraph 63 of the order under appeal, the General Court held that, given that decisions within law firm Z were taken unanimously, PJ exercised, in his capacity as a partner, effective control over all the decisions of that firm, including those concerning the firm's staff, of which Mr S. was part. In particular, the General Court pointed out that Mr S. did not enjoy, vis-à-vis PJ, the same degree of independence as a lawyer working in an external law firm other than that in which his client is a partner and is less able to deal effectively with any conflicts between his professional obligations and the aims of his client.
- 25 The General Court inferred from this, in paragraph 64 of the order under appeal, that Mr S.'s relationship with law firm Z was liable to influence that lawyer's independence, since the interests of the firm were largely the same as those of PJ and there was a risk that the professional opinion of Mr S. would, at least partly, be influenced by his working environment.
- 26 In paragraph 65 of the order under appeal, the General Court held that the professional relationship which Mr S. had with PJ at the time the action was brought was such that he may have been unable to fulfil his main role as an officer of the court in the most appropriate manner.
- 27 With regard to the application for replacement, the General Court found, in paragraph 78 of the order under appeal, that where the applicant for replacement is closely linked to the applicant, the application for replacement is no longer relevant once the action is dismissed as inadmissible, on the ground that there is an irregularity in the representation of the applicant.
- 28 In paragraph 80 of the order under appeal, the General Court added that, in any event, having regard to the fact that the requirements for representation under Article 19 of the Statute of the Court of Justice of the European Union also apply in the context of an application for replacement, Mr S., who had signed the application for replacement, was not an independent lawyer in relation to PC, since the manager of PC was PJ.
- 29 The General Court concluded, in paragraph 81 of the order under appeal, that there was no need to adjudicate on the application for replacement.

Procedure before the Court of Justice and forms of order sought by the parties to the appeals

- 30 On 9 and 10 August 2018, PJ and PC each lodged an appeal against the order under appeal.
- 31 By decision of 29 November 2018, the President of the Court of Justice ordered that the two cases be stayed pending delivery of the judgment in Joined Cases *Uniwersytet Wrocławski and Poland v REA* (C-515/17 P and C-561/17 P).
- 32 On 4 February 2020, the Court delivered judgment in *Uniwersytet Wrocławski and Poland v REA* (C-515/17 P and C-561/17 P, EU:C:2020:73).
- 33 The proceedings were resumed by decision of 6 February 2020.

- 34 By decision of 18 May 2021, the two appeals were joined for the purposes of the oral procedure and the judgment.
- 35 By its appeal in Case C-529/18 P, PJ claims that the Court should:
- set aside the order under appeal;
 - refer the case back to the General Court, and
 - order EUIPO and Erdmann & Rossi to pay the costs.
- 36 By its appeal in Case C-531/18 P, PC claims that the Court should:
- set aside the order under appeal;
 - refer the case back to the General Court, and
 - order EUIPO and Erdmann & Rossi to pay the costs.
- 37 In both cases, EUIPO and Erdmann & Rossi claim that the Court should:
- dismiss the appeals, and
 - order PJ and PC to pay the costs.

The appeals

- 38 In support of his appeal in Case C-529/18 P, PJ relies on three grounds of appeal, alleging infringement of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, distortion of the facts and infringement of the first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') respectively.
- 39 In support of its appeal in Case C-531/18 P, PC also raises three grounds of appeal, alleging, an incorrect finding that there is no need to adjudicate on the application for replacement, infringement of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union and infringement of the first and second paragraphs of Article 47 of the Charter respectively.
- 40 In view of the connection between, first, the first and second grounds of appeal in Case C-529/18 P and, secondly, the second ground of appeal in Case C-531/18 P, it is appropriate to examine these grounds of appeal together.

The first and second grounds of appeal in Case C-529/18 P and the second ground of appeal in Case C-531/18 P

Arguments of the parties

- 41 By his first ground of appeal in Case C-529/18 P, alleging infringement of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, PJ complains that the General Court misapplied the obligation imposed on non-privileged parties to be represented by a lawyer.
- 42 The General Court adopted too broad an interpretation of the requirements relating to the independence of the lawyer, an interpretation which is not justified either by the wording or the meaning of Article 19 and which finds no support in the case-law of the Court of Justice. That interpretation is wholly unforeseeable and contrary to the principle of legal certainty.
- 43 In the first place, PJ submits that, where an applicant is a natural person, the mere fact that the lawyer instructed by him is another natural person is sufficient to satisfy the purpose of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union.
- 44 PJ points out that the requirement of representation by an independent third party before the Courts of the European Union is intended, first, to prevent private parties from acting in their own legal proceedings without recourse to an intermediary and, second, to ensure that legal persons are defended by a representative who is sufficiently detached from the legal person he or she represents.
- 45 In the second place, PJ submits that, even if the criterion used for assessing the independence of lawyers in relation to legal persons is applied in the present case, there is no basis for such a broad interpretation as that adopted by the General Court. The General Court misapplied the case-law on in-house lawyers and exceeded the limits of situations affecting lawyers' independence, since the mere existence of an economic link between a lawyer and his or her client is not sufficient to conclude that there is a lack of independence.
- 46 The situation in the present case is not comparable to that at issue in the case giving rise to the judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej v Commission* (C-422/11 P and C-423/11 P, EU:C:2012:553), on which the General Court relied in the order under appeal. PJ's interests as entrepreneur and proprietor of the mark at issue are in no way identical or to be confused with those of law firm Z, in which Mr S. works. Moreover there is no risk that Mr S. would not be able to resolve any conflicts between his function as an officer of the court and PJ's interests, since the specific purpose of the professional rules is to prevent such conflicts. Furthermore, PJ has no means of giving instructions to Mr S., law firm Z being directed, on a daily basis, by the other partner and all important decisions being adopted unanimously.
- 47 By its second ground of appeal, PJ alleges the General Court distorted the facts in the context of the application of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, in so far as the findings concerning Mr S.'s lack of independence are based on presumptions which are not evidenced by the facts. The conclusion reached by the General Court in paragraph 63 of the order under appeal, relating to the difficulties which Mr S. may face in remedying any conflicts between his professional obligations and the aims of his client, is not substantiated in any way.

- 48 Erdmann & Rossi disputes the facts alleged by PJ concerning the latter's powers within law firm Z and the independence of Mr S. It considers that the requirement of independence referred to in the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union cannot be satisfied merely by observing German professional rules, since the concept of 'lawyer' within the meaning of that provision must be interpreted in the light of EU law. It considers that, in the present case, the criterion of independence was not complied with, given that PJ did not instruct Mr S. but law firm Z, a *société civile professionnelle* (professional partnership). During proceedings, the law firm acts through its partners and its representatives, so that the principal and the agent are the same.
- 49 EUIPO states, first of all, that, in the context of the application for a declaration of invalidity brought by Erdmann & Rossi, the Board of Appeal of EUIPO found that PJ was clearly acting in bad faith in that he applied, to the detriment of his former client, for registration of the sign for which he had received instructions, in his name. According to the Board of Appeal, that conduct is incompatible with the contractual and post-contractual obligations arising from PJ's relationship with his client.
- 50 EUIPO submits that the General Court correctly interpreted the two criteria defined in the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, namely that the representative is a third party and that that third party is a lawyer.
- 51 While EUIPO accepts that the practice of the legal profession as an employee may comply with the rules of professional conduct, it nevertheless considers that the independence required of the salaried lawyer is lacking where the client is the lawyer's employer, since the lawyer can less easily resolve any conflicts between his or her professional obligations and the objectives of his or her employer. That is also the case where the employer is a legal person distinct from the natural person of the client, but where the client is a partner in that legal person, since, from a factual point of view, the decisions are taken by natural persons, especially where they act contrary to the rules of professional conduct.
- 52 Furthermore, EUIPO takes the view that the relationship between a partner and an associate of the firm is comparable to the relationship with an in-house lawyer. Although a lawyer working as an employee in a practice may be independent under the rules of professional conduct when representing third-party clients in relation to that law firm, that independence no longer exists where it is necessary to represent a partner of the firm in which that lawyer also works, especially when that partner is hierarchically superior to the associate.
- 53 EUIPO concludes that, in cases where there is an employment relationship or another form of dependency which may preclude representation within the meaning of the first paragraph of Article 19 of the Statute of the Court of Justice of the European Union, a case-by-case examination should be carried out. Such an examination is a question of fact which is not subject to review by the Court of Justice in the context of an appeal.
- 54 As regards the second ground of appeal, relating to an alleged distortion of the facts, EUIPO considers that PJ is in fact seeking a fresh assessment of those facts by the Court of Justice.

Findings of the Court

- 55 As a preliminary point, as regards EUIPO's arguments alleging that the first and second grounds of appeal in Case C-529/18 P are inadmissible, on the ground that they relate to questions of fact, it must be recalled that it follows from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess those facts. That assessment does not constitute, save where the evidence produced before the General Court has been distorted, a question of law which is subject, as such, to review by the Court of Justice. When the General Court has established or assessed the facts, the Court of Justice has jurisdiction, under Article 256 TFEU, to review the legal characterisation of those facts by the General Court and the legal conclusions which it has drawn from them (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 47).
- 56 In the present case, in order to assess the nature of the relationship between PJ and his representative, the General Court relied on elements of a factual nature, the characterisation of which may be reviewed by the Court of Justice in the light of Article 19 of the Statute of the Court of Justice of the European Union.
- 57 Consequently, the plea of inadmissibility raised by the EUIPO must be rejected.
- 58 As to the substance, it should be recalled, as regards the representation before the Courts of the European Union of a party not covered by the first two paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, that the third and fourth paragraphs of Article 19 of that Statute, applicable to proceedings before the General Court in accordance with Article 56 of that Statute, lay down two separate and cumulative conditions, namely, first, that the parties not referred to by the first two paragraphs of Article 19 must be represented by a lawyer and, second, that only a lawyer authorised to practise before a court of a Member State or of another State party to the Agreement on the European Economic Area may represent or assist a party before the Courts of the European Union (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 55 and the case-law cited).
- 59 Regarding that second condition, it is apparent from the wording of the fourth paragraph of Article 19 of the Statute of the Court of Justice of the European Union that the meaning and scope of that condition must be interpreted by reference to the national law concerned. In the present case, it has not been disputed that that condition was complied with by the lawyer representing PJ in the action at first instance.
- 60 As regards the first condition, relating to the concept of 'lawyer', the Court has held that, in the absence of a reference in the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union to the national law of the Member States, that concept must be given an autonomous and uniform interpretation throughout the European Union, taking into account not only the wording of that provision but also its context and purpose (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 57 and the case-law cited).
- 61 In that regard, and as the General Court noted in paragraph 52 of the order under appeal, it is apparent from the wording of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, in particular the use of the term 'represented', that a 'party',

within the meaning of that provision, whatever that party's standing, is not authorised to act on its own behalf before a Court of the European Union, but must use the services of a third party. Thus, the submission of an application signed by the applicant itself is not sufficient for the purposes of bringing an action, even if the applicant is a lawyer authorised to plead before a national court (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 58 and 59 and the case-law cited).

- 62 That finding is confirmed by the context of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, from which it is clear that representation in legal proceedings of a party not covered by the first two paragraphs of that article can be provided only by a lawyer, whereas the parties covered by those first two paragraphs may be represented by an agent who may, where appropriate, be assisted by adviser or lawyer (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 60).
- 63 That finding is borne out by the objective of parties not covered by the first two paragraphs of Article 19 of the Statute of the Court of Justice of the European Union being represented by a lawyer, which is, on the one hand, to prevent private parties from acting on their own behalf before the Courts without using an intermediary and, on the other, to ensure that legal persons are defended by a representative who is sufficiently distant from the legal person he or she represents (judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 61 and the case-law cited).
- 64 In that regard, the Court has emphasised that the objective of representation by a lawyer, as referred to in the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, which is to be carried out in the interests of the sound administration of justice, is above all to protect and defend to the greatest possible extent the principal's interests, acting in full independence and in line with the law and professional rules and codes of conduct (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 62).
- 65 It is true that the concept of a lawyer's 'independence' was initially developed in the context of document confidentiality in competition matters; the case-law, referred to in paragraphs 53 and 63 of the order under appeal, specified in that regard that a lawyer is an officer of the court called upon to provide, in the overriding interests of justice, legal assistance to the client (see, to that effect, judgments of 18 May 1982, *AM & S Europe v Commission*, 155/79, EU:C:1982:157, paragraph 24, and of 14 September 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission and Others*, C-550/07 P, EU:C:2010:512, paragraph 42). It must nevertheless be noted that the meaning of that concept has evolved in the matter of representation before the Courts of the European Union, the predominant criterion applied in that regard now being the protection and defence of the interests of the client, in line with the law and professional rules and codes of conduct (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 62).
- 66 According to the case-law of the Court, the requirement of the independence of lawyers, in the specific context of Article 19 of the Statute, is determined not only negatively, that is to say, by the absence of an employment relationship, but also positively, that is by reference to professional ethical obligations (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 63 and the case-law cited).

- 67 As the General Court stated in paragraph 54 of the order under appeal, the requirement that a lawyer be independent, in the specific context of Article 19 of the Statute of the Court of Justice of the European Union, necessarily implies that there is no employment relationship between the lawyer and his or her client.
- 68 In addition, as the General Court noted in paragraph 55 of the order under appeal, that reasoning applies with the same force in a situation in which lawyers are employed by an entity connected to the party they represent (judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej v Commission*, C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 25).
- 69 As regards the positive definition of the concept of a lawyer's 'independence', the Court has expressly stated that that independence must be understood not as the lack of any connection whatsoever between the lawyer and his or her client, but only of those which have a manifestly detrimental effect on his or her capacity to carry out the task of defending his or her client while acting in that client's interests to the greatest possible extent, in line with the law and professional rules and codes of conduct (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 62 to 64).
- 70 It is in the light of the foregoing considerations that the merits of the first and second grounds of appeal in Case C-529/18 P and of the second ground of appeal in Case C-531/18 P must be assessed.
- 71 In that regard, the General Court held, in essence, in paragraphs 54 and 55 of the order under appeal, that, as regards the assessment of a lawyer's independence, the situation of a lawyer who is bound to the applicant by a civil law contract must be treated in the same way as a lawyer who is subject to an employment relationship, implying that the lawyer is not independent.
- 72 However, as the Court has already noted, the mere existence of a civil law contractual relationship between a lawyer and his or her client is not sufficient for a finding that the lawyer is in a situation that clearly impairs his or her ability to defend his or her client's interests in accordance with the criterion of independence (see, to that effect, judgment of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraphs 66 and 67).
- 73 In addition, the General Court misinterpreted the criterion of independence within the meaning of Article 19 of the Statute of the Court of Justice of the European Union in holding, in paragraph 57 of the order under appeal, that the requirement to be represented by an independent third party cannot be understood as a requirement intended solely to exclude representation by employees of the principal or by those who are economically dependent on it, but that it constitutes a more general requirement, compliance with which must be examined on a case-by-case basis.
- 74 In order to take account of the objective of the task of legal representation, the requirement of independence imposed by EU law on the representatives of non-privileged parties must be interpreted in such a way as to limit cases of inadmissibility on account of a failure in the task of representation to cases where it is clear that the lawyer is not in a position to carry out his or her task of defending his or her client to the greatest possible extent, so that he or she must be removed in the interests of the client.

- 75 It should, however, be recalled that, if the grounds of a judgment of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, the appeal must be dismissed (judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 47 and the case-law cited).
- 76 In the present case, it is common ground that PJ, who is a lawyer and who carries out a parallel activity in the field of trade mark licensing, instructed law firm Z, a *société civile professionnelle* (professional partnership) of which he is one of the two co-founding partners, to represent him in the context of judicial proceedings relating to a trade mark of which he is the proprietor, and that Mr S., a lawyer practising in that firm as an associate, was entrusted with this representation.
- 77 After analysing, in paragraphs 62 and 63 of the order under appeal, the structure of law firm Z and the decision-making process within it, the General Court concluded, in paragraph 63 of the order under appeal, that PJ exercised effective control over the decisions of the firm concerning Mr S., as a result of which Mr S., notwithstanding his being subject to the professional rules of the legal profession, did not enjoy, with regard to PJ, the same degree of independence as a lawyer practising in a firm other than that in which his client is a partner.
- 78 In that regard, it must be stated that the relationship between Mr S. and law firm Z, or even PJ in his capacity as partner of that firm, cannot automatically be classified as an employment relationship entailing a complete lack of independence, as is apparent from paragraphs 66 to 68 of the present judgment.
- 79 It is well known that the legal profession may be exercised in various forms, ranging from sole practitioners to large international law firms. It is for lawyers who enter into partnerships to define the detailed arrangements governing their collaboration; their contractual relationships may even take the form of wages, provided that the law, national professional rules and applicable professional conduct rules so permit. It must be presumed that a lawyer working in a firm, even if he or she practises his or her profession under an employment contract, satisfies the same requirements of independence as a lawyer practising individually or as a partner in a firm.
- 80 However, although an associate lawyer working in a firm is presumed to satisfy, in principle, the requirements of independence within the meaning of Article 19 of the Statute of the Court of Justice of the European Union, including where he or she performs his or her duties under a contract of employment or in the context of another subordinate relationship, a distinction must be made according to the situation of the client represented.
- 81 Whereas the situation in which the client, whether a natural or legal person, is a third party in relation to the law firm in which the associate in question carries out his or her duties does not raise any particular problem as to that associate's independence, the situation is different from the situation in which the client, a natural person, is himself or herself a partner and founding member of the law firm and may, therefore, exercise effective control over the associate. In the latter situation, it must be held that the links between the associate lawyer and the partner client are such as manifestly to undermine the independence of the lawyer.
- 82 In the light of the foregoing, and by substitution of grounds, the first and second grounds of appeal in Case C-529/18 P and the second ground of appeal in Case C-531/18 P must be rejected as unfounded.

The third ground of appeal in Case C-529/18 P and the third ground of appeal in Case C-531/18 P

Arguments of the parties

- 83 By his third ground of appeal in Case C-529/18 P, alleging infringement of the first and second paragraphs of Article 47 of the Charter, PJ submits that the broad interpretation on which the General Court relied has significant repercussions not only on the freedom to practise the legal profession in Europe, but also on the fundamental rights of individuals who are denied effective judicial protection. The argument relied on by PC in the third ground of appeal in Case C-531/18 P is essentially identical.
- 84 PJ submits that the order under appeal infringes the right to effective judicial protection in that that right implies effective access to the courts. PJ explains in that regard that, if the General Court had informed him in good time of the existence of a possible irregularity vitiating legal representation, it would have been possible for him to instruct another lawyer within the time limits.
- 85 Both Erdmann & Rossi and EUIPO contend that there has been no infringement of the right to effective judicial protection in the present case.

Findings of the Court

- 86 It is important to recall that the principle of effective judicial protection of the rights which individuals derive from EU law, to which the second subparagraph of Article 19(1) TEU also refers, is a general principle of EU law which derives from the constitutional traditions common to the Member States that is now affirmed in Article 47 of the Charter (see, to that effect, judgment of 5 November 2019, *ECB and Others v Trasta Komerčbanka and Others*, C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923, paragraph 55 and the case-law cited).
- 87 Effective judicial protection of a natural person such as PJ, the proprietor of a mark that has been the subject of a request for a declaration of invalidity, is ensured by the right of that person to bring an action before the Courts of the European Union against the annulment decision of the Board of Appeal of EUIPO.
- 88 As regards the possibility of regularisation, it is apparent from the case-law of the Court that, although the Statute of the Court of Justice of the European Union and the Rules of Procedure of the General Court provide for the possibility of regularising an application which does not comply with certain formal requirements, failure to comply with the obligation to provide representation by a lawyer authorised to practise before a court of a Member State or of another State party to the Agreement on the European Economic Area is not one of the requirements which may be met after the action has been brought, in accordance with the second paragraph of Article 21 of the Statute and Article 44(6) of the Rules of Procedure, now Article 78(6) of the Rules of Procedure (orders of 27 November 2007, *Diy-Mar Insaat Sanayi ve Ticaret and Akar v Commission*, C-163/07 P, EU:C:2007:717, paragraph 26, and of 20 February 2008, *Comunidad Autónoma de Valencia v Commission*, C-363/06 P, not published, EU:C:2008:99, paragraph 34).

- 89 It is true that, under Article 55(3) of the Rules of Procedure of the General Court, it is possible to appoint a new party representative where the General Court decides to exclude the representative originally appointed because it considers that the representative's conduct is, as provided for in Article 55(1) of the Rules of Procedure, incompatible with the dignity of the General Court or with the requirements of the sound administration of justice.
- 90 However, in a case such as that noted in paragraph 81 of this judgment, no provision of the Rules of Procedure of the General Court or of the Statute of the Court of Justice of the European Union currently obliges the General Court or the Court of Justice to notify the person bringing an action or to give him or her the opportunity to appoint a new representative in the course of the proceedings.
- 91 It follows from the foregoing that the third ground of appeal in Case C-529/18 P and the third ground of appeal in Case C-531/18 P must be dismissed as unfounded.

The first ground of appeal in Case C-531/18 P

Argument of the parties

- 92 By the first ground of appeal in Case C-531/18 P, PC complains that the General Court found that there was no need to adjudicate on the request for substitution in favour of PC.
- 93 Erdmann & Rossi and EUIPO contend that that ground of appeal should be rejected.

Findings of the Court

- 94 Given that the lawfulness of the General Court's decision dismissing the action brought by PJ as inadmissible, on the ground of an irregularity in his legal representation, has been upheld in the present judgment, it must be held that the application for replacement is no longer relevant and that there is no need to adjudicate on that application.
- 95 The first ground of appeal in Case C-531/18 P must therefore also be rejected.
- 96 It follows from the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

- 97 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where an appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 98 In the present case, since Erdmann & Rossi and EUIPO have applied for PJ and PC to be ordered to pay the costs and PJ and PC have been unsuccessful, they must be ordered to pay the costs of the present appeal and the proceedings before the General Court.

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

- 1. Dismisses the appeals;**
- 2. Orders PJ to pay the costs of Case C-529/18 P both in respect of the present appeal and the proceedings before the General Court;**
- 3. Orders PC to pay the costs of Case C-531/18 P both in respect of the present appeal and the proceedings before the General Court.**

[Signatures]