



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 February 2020*

(Appeal — Action for annulment — Article 19 of the Statute of the Court of Justice of the European Union — Representation of parties in direct actions before the Courts of the European Union — Lawyer representing the applicant as a third party — Article 47 of the Charter of Fundamental Rights of the European Union)

In Joined Cases C-515/17 P and C-561/17 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 August 2017 (C-515/17 P) and 22 September 2017 (C-561/17 P),

Uniwersytet Wrocławski, established in Wrocław (Poland), represented by A. Krawczyk-Giehsman and K. Szarek, adwokaci, and by K. Słomka, radca prawny,

appellant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

intervener in the appeal,

the other party to the proceedings being:

Research Executive Agency (REA), represented by S. Payan-Lagrou and V. Canetti, acting as Agents, and by M. Le Berre, avocat, and G. Materna, radca prawny,

defendant at first instance (C-515/17 P),

and

Republic of Poland, represented by B. Majczynya, D. Lutostańska and A. Siwek-Slusarek, acting as Agents,

appellant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil and A. Kasalická, acting as Agents,

* Language of the case: Polish

Krajowa Izba Radców Prawnych, established in Warsaw (Poland), represented by P.K. Rosiak and S. Patyra, radcowie prawni,

interveners in the appeal,

the other parties to the proceedings being:

Uniwersytet Wrocławski, established in Wrocław, represented by A. Krawczyk-Giehsmann and K. Szarek, adwokaci, and by K. Słomka, radca prawny,

applicant at first instance,

Research Executive Agency (REA), represented by S. Payan-Lagrou and V. Canetti, acting as Agents, and by M. Le Berre, avocat, and G. Materna, radca prawny,

defendant at first instance (C-561/17 P),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, P.G. Xuereb and I. Jarukaitis, Presidents of Chambers, E. Juhász, J. Malenovský, L. Bay Larsen, F. Biltgen (Rapporteur), N. Piçarra and A. Kumin, Judges,

Advocate General: M. Bobek,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 11 June 2019,

after hearing the Opinion of the Advocate General at the sitting on 24 September 2019,

gives the following

Judgment

- 1 By their appeals, the Uniwersytet Wrocławski (University of Wrocław, Poland) and the Republic of Poland seek the setting aside of the order of the General Court of the European Union of 13 June 2017, *Uniwersytet Wrocławski v REA* (T-137/16, not published, EU:T:2017:407) ('the order under appeal'), by which that court dismissed as manifestly inadmissible the action brought by the University of Wrocław seeking, first, annulment of the decisions of the Research Executive Agency (REA), acting under powers delegated by the European Commission, terminating the Cossar grant agreement (No 252908) and requiring that university to repay the sums of EUR 36 508.37, EUR 58 031.38 and EUR 6 286.68 and to pay damages in the amount of EUR 5 803.14, and, second, reimbursement by the REA of the corresponding sums plus interest calculated from the date of payment until the date of reimbursement.

Legal context

European Union law

- 2 Under Article 19 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 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.’

Polish law

- 4 Polish law recognises, alongside the profession of lawyer, the profession of legal adviser (*radca prawný*). Legal advisers may request admission to the Bar and be authorised to represent their clients before the Polish courts.

Background to the dispute

- 5 The background to the dispute may be summarised as follows.
- 6 In connection with a programme for research, technological development and demonstration activities, the REA concluded a grant agreement with the University of Wrocław which stated, inter alia, that the researcher who was employed on a full-time basis in connection with the subsidised activity was not authorised to receive any income except for that relating to his research work.
- 7 However, it became apparent that the researcher in question was also receiving remuneration for other activities, with the result that the REA terminated the grant agreement, sent a debit note to the University of Wrocław for a sum of EUR 36 508.37, and informed that body that it was withdrawing a sum of EUR 6 286.68 directly from the guarantee fund as provided for in the grant agreement. The University of Wrocław paid the sum corresponding to that debit note.
- 8 Following an investigation conducted by the European Anti-Fraud Office (OLAF), the REA sent the University of Wrocław two additional debit notes amounting to EUR 58 031.38 — the outstanding balance of the grant — and EUR 5 803.14 in damages payable under the penalty clause laid down in the grant agreement, respectively. The University of Wrocław also paid those two debit notes.

Procedure before the General Court and the order under appeal

- 9 By application lodged at the Registry of the General Court on 25 March 2016, the University of Wrocław brought an action seeking, first, annulment of the decisions of the REA terminating the grant agreement and requiring it to repay a part of the subsidies in question and to pay damages, and, second, reimbursement of the corresponding sums, together with interest calculated from the date of payment of those sums by that university until the date of reimbursement of those sums by the REA.
- 10 In its defence, the REA raised an objection of inadmissibility in respect of that action, alleging, in particular, that the legal adviser representing the University of Wrocław was employed by a research centre of that university's Faculty of Law and Management, and that he did not therefore satisfy the condition of independence required by the Statute.
- 11 The University of Wrocław argued that, although the legal adviser representing it before the General Court had, in the past, been connected to it by an employment contract, this was no longer the case by the time it brought the action at first instance. Indeed, since 3 October 2015, that legal adviser has been connected to the university by a civil law contract for the provision of lecturing services. That contract is, according to the university, characterised by the lack of any hierarchical relationship and cannot, therefore, be regarded as an employment contract.
- 12 In paragraph 14 of the order under appeal, the General Court indicated that the third and fourth paragraphs of Article 19 of the Statute, applicable to proceedings before the General Court under Article 53 thereof, provides that 'non-privileged' parties must be represented by a lawyer and that only a lawyer authorised to practise before a court of a Member State may represent or assist such parties before the Court.
- 13 In paragraphs 16 and 17 of the order under appeal, the General Court noted, regarding those two cumulative conditions, that, unlike the authorisation to practise before a court of a Member State, the concept of 'lawyer' does not include any explicit reference to the national law of the Member States for the purposes of determining its meaning and scope. It specified that, according to the settled case-law of the Court of Justice, that concept must be interpreted, as far as possible, autonomously, having regard to the context and the purpose of the provision in question, without reference to national law.
- 14 Thus, the General Court held, in paragraph 18 of the order under appeal, referring to the conception of the lawyer's role in the legal order of the European Union, which is derived from the legal traditions common to the Member States and on which Article 19 of the Statute is based, and, *inter alia*, to the judgments of 18 May 1982, *AM & S Europe v Commission* (155/79, EU:C:1982:157, paragraph 24), of 14 September 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission and Others* (C-550/07 P, EU:C:2010:512, paragraph 42), and of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej v Commission* (C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 23), that the lawyer's role is that of collaborating in the administration of justice and of being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs.
- 15 It inferred from this, in paragraph 19 of the order under appeal, that the requirement for a lawyer to be independent means that there must be no employment relationship between the lawyer and his or her client, the concept of 'independence' being determined not only positively, that is by reference to professional ethical obligations, but also negatively, that is to say, by the absence of an employment relationship.
- 16 In paragraph 20 of the order under appeal, the General Court considered that those findings were applicable in the case at hand, namely in a situation where a legal adviser is connected to the party he or she is supposed to represent by way of a service contract, inasmuch as, even if, formally, it were to be held that such a contract does not give rise to an employment relationship between those two

parties, the fact remains that such a situation creates a risk that the professional opinion of that legal adviser might be, at least partly, influenced by his or her working environment, as the Court of Justice recalled, in essence, in paragraph 25 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).

- 17 Thus, the General Court held, in paragraph 21 of the order under appeal, that, because the application initiating proceedings had been signed by such a legal adviser, the action at first instance had not been brought by a person meeting the requirements of the third and fourth paragraphs of Article 19 of the Statute and Article 51(1) of the Rules of Procedure of the General Court. Consequently, it dismissed that action as being manifestly inadmissible.

Procedure before the Court of Justice and forms of order sought

- 18 By decision of the President of the Court of 24 November 2017, the two appeals were joined for the purposes of the written and oral procedure and the judgment.

- 19 On 6 February 2018 the Czech Republic applied for leave to intervene in the joined appeals. By decision of 31 May 2018, the President of the Court granted the Czech Republic leave to intervene.

- 20 By order of the President of the Court of 5 July 2018, *Uniwersytet Wrocławski and Poland v REA* (C-515/17 P and C-561/17 P, not published, EU:C:2018:553), the Krajowa Izba Radców Prawnych (National Chamber of Legal Advisers, Poland) was granted leave to intervene in Case C-561/17 P in support of the form of order sought by the Republic of Poland.

- 21 By order of the President of the Court of 27 February 2019, *Uniwersytet Wrocławski and Poland v REA* (C-515/17 P and C-561/17 P, not published, EU:C:2019:174), the application for leave to intervene submitted by the Association of Corporate Counsel Europe was refused.

- 22 By its appeal in Case C-515/17 P, the University of Wrocław, supported by the Czech Republic, claims that the Court should:

- set aside the order under appeal;
- declare that the action at first instance was properly brought; and
- order the REA to bear the costs in their entirety.

- 23 By its appeal in Case C-561/17 P, the Republic of Poland, supported by the Czech Republic and the National Chamber of Legal Advisers, claims that the Court should:

- set aside the order under appeal;
- refer the case back to the General Court for reconsideration;
- order each of the parties to bear its own costs; and
- assign the case to the Grand Chamber, in accordance with the third paragraph of Article 16 of the Statute.

- 24 The REA contends that the Court should:

- dismiss the appeals;

- order the University of Wrocław and the Republic of Poland to pay the costs; and
- order the Czech Republic and the National Chamber of Legal Advisers to bear their own costs.

The appeals

- 25 In support of its appeal in Case C-515/17 P, the University of Wrocław relies on two grounds of appeal, alleging that the General Court erred in its interpretation of Article 19 of the Statute and that it provided an insufficient statement of reasons in the order under appeal, respectively. In support of its appeal in Case C-561/17 P, the Republic of Poland raises three grounds of appeal, alleging that the General Court (i) erred in its interpretation of that provision, (ii) failed to observe the principles of legal certainty and effective judicial protection, and (iii) provided an insufficient statement of reasons in that order.
- 26 In the light of the connection between them, the first ground of appeal in both appeals and the second ground of appeal in Case C-561/17 P, alleging that the General Court erred in its interpretation of Article 19 of the Statute and that it failed to observe the principles of legal certainty and effective judicial protection, must be examined together.

Arguments of the parties

- 27 By its first ground of appeal, the University of Wrocław criticises the General Court for holding that a legal adviser, connected to the party he is representing by a contract for the supply of services under which he is called upon, inter alia, to give lectures, does not have the requisite independence from his principal that would enable him to represent that principal in proceedings before the Courts of the European Union.
- 28 By the first part of its first ground of appeal, the University of Wrocław argues that the nature and the main characteristics of the contract for the supply of services at issue in the present case do not permit that contract to be regarded as an employment contract, because, inter alia, the hierarchical relationship which is characteristic of the latter type of contract is missing.
- 29 By the second part of that ground of appeal, the University of Wrocław submits that the ground of the order under appeal according to which any legal relationship between a party and its legal representative may influence that representative's legal opinion is at odds with the principles of proportionality and subsidiarity, in that it gives the EU institutions the exclusive power to decide who may validly appear before the Courts of the European Union.
- 30 By the third part of that ground of appeal, the University of Wrocław, supported by the Czech Republic and the National Chamber of Legal Advisers, complains that the General Court failed to take into consideration national law, and, more specifically, Polish law, which guarantees that a legal adviser is independent from and is in no way subordinate to third parties. It emphasises that, like the profession of lawyer, the profession of legal adviser serves both the interests of justice and the interests of the persons with whose rights of defence the legal adviser is entrusted, is based on public trust and is governed by a professional code of conduct.
- 31 By the first part of its first ground of appeal, the Republic of Poland argues, in the first place, that there is no basis for the General Court's interpretation of Article 19 of the Statute in the order under appeal in either the legal traditions common to the Member States or EU law. In that regard, the Republic of Poland emphasises that the General Court contradicts itself inasmuch as it considers that the lawyer's role is drawn from the legal traditions common to the Member States and interprets the concept of 'lawyer' without referring to national law.

- 32 In the second place, the Republic of Poland submits that the assessment of independence vis-à-vis the principal may not be carried out without reference being made to the guarantees derived from various national laws.
- 33 In the third place, the Republic of Poland considers that the concept of ‘independence’ used in the order under appeal disregards the reality of practising as a lawyer, inasmuch as that concept is based on the premiss that an in-house lawyer, who is practising in the context of an employment relationship, will be subject to greater pressure from his or her employer than an external lawyer, who is only subject to pressure from his or her client.
- 34 In the fourth place, the Republic of Poland argues that, were the Court of Justice to abide by the solution provided by the General Court, based on the current case-law of the Court of Justice relating to the representation of parties before the Courts of the European Union, this would have the result of creating a system where two levels of required independence would be applicable to the same lawyer: one level before the national courts and another, stricter level before the Courts of the European Union.
- 35 The Czech Republic considers in that context that any limitation of the right of lawyers who have no employment relationship with their clients to represent those clients must be interpreted strictly.
- 36 By the second part of its first ground of appeal, the Republic of Poland argues that the General Court’s interpretation of Article 19 of the Statute goes beyond the limits of the current case-law of the Court of Justice relating to the representation of parties before the Courts of the European Union.
- 37 First, that case-law links the requirement for the lawyer to be independent solely to the negative condition of there being no employment contract between that lawyer and his or her client. However, in the present case, the General Court itself found, in paragraph 20 of the order under appeal, that the signatory of the action at first instance was not connected to the University of Wrocław by an employment contract. In that regard, the Republic of Poland argues that the General Court was wrong to decide, on the basis of applying, by analogy, 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), that the existence of a civil law contract connecting the parties in question was sufficient for a finding that that university’s legal representative did not satisfy the condition of independence.
- 38 Second, the Republic of Poland criticises the order under appeal inasmuch as the General Court only took into consideration the contract concluded between the legal adviser and the University of Wrocław relating to the teaching assignment, but failed to analyse the links connecting the parties in relation to the legal assistance provided.
- 39 The National Chamber of Legal Advisers emphasises that the General Court erred in its line of reasoning, which is tantamount to considering that, in order for a lawyer to be totally independent, he or she must have no connection whatsoever with his or her client’s working environment. It argues that it is difficult to conceive of a legal representative being able to act without being subject to any influence whatsoever from his or her client’s immediate working environment.
- 40 By its second ground of appeal, the Republic of Poland argues that, as the order under appeal does not specify the criteria that would permit assessment of the degree of independence required by the General Court, that order is at odds with the principle of legal certainty. In addition, in so far as the result of a finding that the legal representative is not independent is the dismissal of the action, the applicant concerned would be deprived of both an effective remedy and its right of access to a court.

- 41 The Czech Republic recalls that representation by a lawyer before the courts is part of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). Forbidding an applicant to conclude a legal representation agreement with a lawyer with whom it also has a contractual connection is liable to expose that applicant to additional costs.
- 42 The National Chamber of Legal Advisers considers that not only the act of prohibiting the representation of a party referred to in the third and fourth paragraphs of Article 19 of the Statute by a lawyer who is contractually connected to that party, but also the situation resulting from that prohibition, namely the dismissal of the action with no possibility of rectifying the alleged procedural defect, is a limitation of the right to an effective remedy before the General Court protected by Article 47 of the Charter.
- 43 The REA pleads, first of all, the inadmissibility of both appeals in so far as they raise arguments relating to the assessment of the facts and are based on pleas in law and arguments that have already been discussed before the General Court. Next, it argues that the University of Wrocław's appeal is inadmissible in so far as it is based on facts relating to the situation of the lawyer concerned which were not submitted to the General Court. Lastly, it contends that the arguments used by the Czech Republic and the National Chamber of Legal Advisers in their statements in intervention are inadmissible inasmuch as they refer to infringement of Article 47 of the Charter; no such argument has been put forward by either the University of Wrocław or the Republic of Poland. The Czech Republic's line of argument is also inadmissible inasmuch as it does not identify any specific paragraph of the order under appeal.
- 44 As regards the substance, the REA contends that the line of argument according to which Article 19 of the Statute must be interpreted on the basis of national rules entails replacing that article, which governs the representation of parties before the Courts of the European Union, with national rules, determined on a case-by-case basis. Thus, it argues that, far from being a 'limitation', the General Court's interpretation is a guarantee that all EU lawyers will be subject to the same conditions as regards representation before the Court.
- 45 Furthermore, it maintains that the General Court has not gone beyond the existing case-law of the Court of Justice in this area, which is more wide-ranging than the appeals suggest, inasmuch as that case-law has already laid down the requirement that the adviser must be sufficiently distant from the party he or she is representing.
- 46 It contends that, in any event, the line of argument based on Article 47 of the Charter must be rejected as unfounded, in so far as the inadmissibility of the action would not prevent the University of Wrocław from being represented by another adviser in order to bring new proceedings before the General Court on the basis of Article 272 TFEU.

Findings of the Court

Admissibility

- 47 Regarding the pleas of inadmissibility raised by the REA, first, on the ground that the appeals contain arguments relating to the assessment of the facts, it should be borne in mind that it follows from Article 256 TFEU and from the first paragraph of Article 58 of the Statute 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.

- 48 In the present case, in order to assess the nature and substance of the professional relationship between the University of Wrocław and its legal 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 the proper interpretation of Article 19 of the Statute.
- 49 Secondly, in so far as the REA argues that the appeals confine themselves to raising arguments that have already been discussed before the General Court, it should be borne in mind that, where an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be raised again in the course of an appeal. If an appellant could not thus base its appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (judgment of 27 March 2019, *Canadian Solar Emea and Others v Council*, C-236/17 P, EU:C:2019:258, paragraph 124 and the case-law cited).
- 50 Thirdly, regarding the REA's argument that the University of Wrocław has raised new facts in its appeal, it is sufficient to point out that, in any event, those facts are irrelevant for the resolution of the present dispute.
- 51 Fourthly, and as regards the statements in intervention made by the Czech Republic and the National Chamber of Legal Advisers, it should be borne in mind that a party which, pursuant to Article 40 of the Statute, is granted leave to intervene in a case before the Court of Justice may not alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the main parties, so that arguments submitted by an intervener are not admissible unless they fall within the framework provided by those forms of order and pleas in law (judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C-482/17, EU:C:2019:1035, paragraph 116).
- 52 However, in so far as the Republic of Poland is relying, in particular, on a failure to observe the principle of effective judicial protection guaranteed by Article 47 of the Charter, the arguments raised by the Czech Republic and the National Chamber of Legal Advisers as referred to in paragraphs 41 and 42 above are not such as to alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the Republic of Poland.
- 53 Fifthly, as regards the REA's argument relating to the Czech Republic's failure to identify specific paragraphs of the order under appeal, it must be pointed out that the Czech Republic, by supporting the respective arguments of the University of Wrocław and the Republic of Poland, is referring to the same paragraphs of that order as those parties.
- 54 Consequently, the objections of inadmissibility raised by the REA must be rejected.

Substance

- 55 Regarding the substance, and more specifically the issue of the representation of a party not covered by the first two paragraphs of Article 19 of the Statute before the Courts of the European Union, the General Court correctly recalled, in paragraph 16 of the order under appeal, that that article contains two separate, but cumulative, conditions. Thus, the first condition, set out in the third paragraph of that article, lays down the requirement for such a party to be represented by a lawyer. The second condition, contained in the fourth paragraph of that article, provides that the lawyer representing that party must be authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement (see, to that effect, order of 20 February 2008, *Comunidad Autónoma de Valencia v Commission*, C-363/06 P, not published, EU:C:2008:99, paragraph 21).

- 56 Regarding that second condition, it is apparent from the wording of the fourth paragraph of Article 19 of the Statute that the meaning and scope of that condition must be interpreted by reference to the national law concerned. In the present case, it is common ground that that condition was satisfied by the legal adviser representing the University of Wrocław in the action at first instance.
- 57 By contrast, as regards the first condition, relating to the concept of ‘lawyer’, the Court of Justice has held that, as there is no reference in the third paragraph of Article 19 of the Statute 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 (see, to that effect, in particular, order of 20 February 2008, *Comunidad Autónoma de Valencia v Commission*, C-363/06 P, not published, EU:C:2008:99, paragraph 25 and the case-law cited), it being specified however that that concept, for the purposes of that article, is without prejudice to the recognised possibility for persons authorised, under national law, to represent a party in a dispute to represent that same party before the Court of Justice in the context of a reference for a preliminary ruling.
- 58 In that regard, it is apparent from the wording of the third paragraph of Article 19 of the Statute, and in particular from the use of the term ‘represented’, that a ‘party’ as referred to in 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. Other provisions of that Statute or of the Rules of Procedure of the Court of Justice, such as the first paragraph of Article 21 of the Statute and Article 44(1)(b), Article 57(1) and Article 119(1) of those Rules of Procedure, also confirm that a party and its legal representative cannot be one and the same person (orders of 5 December 1996, *Lopes v Court of Justice*, C-174/96 P, EU:C:1996:473, paragraph 11; of 16 March 2006, *Correia de Matos v Commission*, C-200/05 P, not published, EU:C:2006:187, paragraph 10; and of 6 April 2017, *PITEE v Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 23).
- 59 Given that, regarding direct actions, no derogation from or exception to that obligation is provided for by the Statute or by the Rules of Procedure of the Court of Justice and of the General Court, the submission of an application signed by the applicant itself is not sufficient for the purpose of bringing an action, even if the applicant is a lawyer authorised to plead before a national court (see, to that effect, orders of 5 December 1996, *Lopes v Court of Justice*, C-174/96 P, EU:C:1996:473, paragraphs 8 and 10; of 16 March 2006, *Correia de Matos v Commission*, C-200/05 P, not published, EU:C:2006:187, paragraph 11; and of 6 April 2017, *PITEE v Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 24).
- 60 The foregoing is confirmed by the context of the third paragraph of Article 19 of the Statute. It is clear from that provision that the legal representation of a party not covered by the first two paragraphs of that article can be carried out only by a lawyer, whereas the parties covered by those first two paragraphs may be represented by an agent who may, if necessary, be assisted by an adviser or by a lawyer.
- 61 That finding is borne out by the objective of parties not covered by the first two paragraphs of Article 19 of the Statute 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 which he or she represents (see, to that effect, orders of 5 September 2013, *ClientEarth v Council*, C-573/11 P, not published, EU:C:2013:564, paragraph 14; of 4 December 2014, *ADR Center v Commission*, C-259/14 P, not published, EU:C:2014:2417, paragraph 25; and of 6 April 2017, *PITEE v Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 27).
- 62 In that regard, it should be emphasised that, while the task of representation by a lawyer referred to in the third and fourth paragraphs of Article 19 of the Statute must be carried out in the interests of the sound administration of justice, the objective of that task is, above all, as was also noted by the

Advocate General in point 104 of his Opinion, to protect and defend the principal's interests to the greatest possible extent, acting in full independence and in line with the law and professional rules and codes of conduct.

- 63 As the General Court correctly recalled in paragraph 19 of the order under appeal, the concept 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 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).
- 64 In that context, the lawyer's duty of independence is to be understood not as the lack of any connection whatsoever between the lawyer and his or her client, but the lack of connections 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.
- 65 In that regard, the Court of Justice has previously held that a lawyer who has been granted extensive administrative and financial powers which place his or her function at a high executive level within the legal person he or she is representing, such that his or her status as an independent third party is compromised, is not sufficiently independent from that legal person (see, to that effect, order of 29 September 2010, *EREF v Commission*, C-74/10 P and C-75/10 P, not published, EU:C:2010:557, paragraphs 50 and 51); nor is a lawyer who holds a high-level management position within the legal person he or she is representing (see, to that effect, order of 6 April 2017, *PITEE v Commission*, C-464/16 P, not published, EU:C:2017:291, paragraph 25) or a lawyer who holds shares in, and is the president of the board of administration of the company he or she is representing (order of 4 December 2014, *ADR Center v Commission*, C-259/14 P, not published, EU:C:2014:2417, paragraph 27).
- 66 However, the situation at issue in the present case, in which, as can be seen from the order under appeal, the legal adviser not only was not defending the interests of the University of Wrocław in the context of a hierarchical relationship with that university, but also was simply connected to the university by a contract for the provision of lecturing services at that university, cannot be regarded as equivalent to those situations.
- 67 Such a connection is not sufficient for a finding that that legal adviser was in a situation that had a manifestly detrimental effect on his capacity to defend his client's interests to the greatest possible extent, in full independence.
- 68 Consequently, by holding, in paragraph 20 of the order under appeal, that the mere existence of a civil law contract for the provision of lecturing services between the University of Wrocław and the legal adviser representing that university in the action at first instance was liable to have an effect on the independence of that adviser because there was a risk that the professional opinion of that adviser would be, at least partly, influenced by his working environment, the General Court erred in law.
- 69 As a result, the first ground of appeal relied on by the University of Wrocław and the Republic of Poland in support of their respective appeals must be upheld. Accordingly, and without it being necessary to examine the other arguments raised in the second ground of appeal in Case C-561/17 P, relating to the principle of legal certainty and the right to an effective remedy, or the other grounds raised in the appeals, the order under appeal must be set aside.

Referral of the case back to the General Court

- 70 In accordance with the first paragraph of Article 61 of the Statute, if the appeal is well founded, the Court of Justice, when setting aside the decision of the General Court, may give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- 71 In the present case, as the General Court has not given a ruling on the substance, it is appropriate to refer the case back to that court.

Costs

- 72 Since the case has been referred back to the General Court, the costs relating to the appeal proceedings must be reserved.

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

- 1. Sets aside the order of the General Court of the European Union of 13 June 2017, *Uniwerytet Wrocławski v REA* (T-137/16, not published, EU:T:2017:407).**
- 2. Refers Case T-137/16 back to the General Court of the European Union.**
- 3. Reserves the costs.**

[Signatures]