

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

7 May 2019 (\*)

(Reference for a preliminary ruling — Directive 98/5/EC — Access to the profession of lawyer — Monk who has obtained the professional qualification of lawyer in a Member State other than the host Member State — Article 3(2) — Condition requiring registration with the competent authority of the host Member State — Certificate attesting to registration with the competent authority of the home Member State — Refusal to register — Rules of professional conduct — Incompatibility of the status of monk with practice of the profession of lawyer)

In Case C-431/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulio tis Epikrateias (Council of State, Greece), made by decision of 29 June 2017, received at the Court on 17 July 2017, in the proceedings

**Monachos Eirinaios**, kata kosmon Antonios Giakoumakis tou Emmanouil

v

**Dikigorikos Syllogos Athinon**,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, T. von Danwitz, C. Toader, F. Biltgen, K. Jürimäe and C. Lycourgos, Presidents of Chambers, J. Malenovský, E. Levits, L. Bay Larsen (Rapporteur), M. Safjan, C. Vajda and S. Rodin, Judges,

Advocate General: E. Sharpston,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 September 2018,

after considering the observations submitted on behalf of:

- Monachos Eirinaios, kata kosmon Antonios Giakoumakis tou Emmanouil, by A. Charokopou, dikigoros,
- Dikigorikos Syllogos Athinon, by D. Vervesos and P. Nikolopoulos, dikigoroï,
- the Greek Government, by M. Tassopoulou, acting as Agent,
- the Netherlands Government, by M.K. Bulterman and M.L. Noort, acting as Agents,
- the European Commission, by H. Tserepa-Lacombe and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 December 2018,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36).

2 The request has been made in proceedings between Monachos Eirinaios, kata kosmon Antonios Giakoumakis tou Emmanouil (Monk Irenaeus, lay name Antonios Giakoumakis, son of Emmanouil; ‘Monachos Eirinaios’), and the Dikigorikos Syllogos Athinon (Athens Bar Association, Greece; ‘the DSA’) concerning that authority’s refusal to grant his application to be entered on the special register of the Athens Bar as a lawyer practising under his home-country professional title.

### Legal context

#### *EU law*

3 Recitals 2, 6 and 8 of Directive 98/5 are worded as follows:

‘(2) ... the objective of [Council] Directive 89/48/EEC [of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration (OJ 1989 L 19, p. 16)] is to ensure that a lawyer is integrated into the profession in the host Member State, and [that] Directive seeks neither to modify the rules regulating the profession in that State nor to remove such a lawyer from the ambit of those rules;

...

(6) ... action is also justified at Community level because only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; ... however, in the Member States where this possibility exists, the practical details concerning, for example, the area of activity and the obligation to register with the competent authorities differ considerably; ... such a diversity of situations leads to inequalities and distortions in competition between lawyers from the Member States and constitutes an obstacle to freedom of movement; ... only a directive laying down the conditions governing practice of the profession, otherwise than by way of provision of services, by lawyers practising under their home-country professional titles is capable of resolving these difficulties and of affording the same opportunities to lawyers and consumers of legal services in all Member States;

...

(8) ... lawyers covered by the Directive should be required to register with the competent authority in the host Member State in order that that authority may ensure that they comply with the rules of professional conduct in force in that State; ...’

4 Article 1(1) and (2) of Directive 98/5 provides:

‘1. The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.

2. For the purposes of this Directive:

...

- (b) “home Member State” means the Member State in which a lawyer acquired the right to use one of the professional titles referred to in (a) before practising the profession of lawyer in another Member State;
- (c) “host Member State” means the Member State in which a lawyer practises pursuant to this Directive;
- (d) “home-country professional title” means the professional title used in the Member State in which a lawyer acquired the right to use that title before practising the profession of lawyer in the host Member State;

...’

5 As set out in the first paragraph of Article 2 of Directive 98/5:

‘Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.’

6 Article 3 of Directive 98/5, headed ‘Registration with the competent authority’, provides in paragraphs 1 and 2:

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

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

7 Article 6 of Directive 98/5, headed ‘Rules of professional conduct applicable’, provides in paragraph 1:

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

#### *Greek law*

8 The Hellenic Republic transposed Directive 98/5 into domestic law by Proedriko Diatagma 152/2000, Diefkolynsi tis monimis askisis tou dikigorikou epangelmatos stin Ellada apo dikigorous pou apektisan ton epangelmatiko tous titlo se allo kratos-melos tis EE (Presidential Decree 152/2000 facilitating practice of the profession of lawyer on a permanent basis in Greece by lawyers who obtained their professional qualification in another Member State of the European Union) of 23 May 2000 (FEK A’ 130).

9 Article 5(1) and (2) of that presidential decree provides:

‘1. In order to practise the profession in Greece, the lawyer must be entered on the register of the bar association in whose area he will pursue his activities and must retain an office in that area.

2. The board of administration of the aforesaid bar association shall decide upon that registration after the person concerned has submitted the following certificates:

...

- (c) a certificate of registration from the competent authority of the home Member State which granted the professional qualification or another competent authority of the home State. ...’

10 Article 6 of the Kodikas dikigoron (Lawyers' Code; Law 4194/2013, FEK A' 208), headed 'Conditions to become a lawyer — Impediments', provides in paragraph 6:

'The lawyer must ... not have the status of ... monk.'

11 It is clear from Article 7(1)(a) and (c) of the Lawyers' Code that a person who is a clergyman or a monk or who is appointed to or holds any paid post under a contract entailing a relationship as an employee or a public official in the service of any legal person governed by private or public law is to lose *ipso jure* the status of lawyer and to be removed from the register of the bar association of which he is a member.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

12 Monachos Eirinaios, the applicant in the main proceedings, is a monk at the Holy Monastery of Petra, in Karditsa (Greece).

13 By application of 12 June 2015, Monachos Eirinaios requested the DSA to enter him on the special register of the Athens Bar as a lawyer having acquired that professional status in another Member State, namely in Cyprus.

14 On 18 June 2015, the DSA rejected that application on the basis of the national provisions relating to the incompatibility between practice of the profession of lawyer and the status of monk, taking the view that those provisions also apply to lawyers wishing to practise in Greece under their home-country professional title.

15 On 29 September 2015, Monachos Eirinaios challenged that decision before the Symvoulío tis Epikrateias (Council of State, Greece).

16 In support of his action he pleads in particular that the national legislation is inconsistent with Directive 98/5, on the ground that that legislation imposes a condition not provided for by the directive. In his submission, the directive fully harmonises the rules relating to the conditions for registration, with the competent authority of the host Member State, of lawyers who have obtained their professional qualification in another Member State.

17 The DSA contends, in essence, that the national legislation under which monks cannot be lawyers is justified by fundamental rules and principles governing practice of the profession of lawyer in the host Member State.

18 That authority takes the view that the status of monk does not allow a monk to provide, in accordance with those rules and principles, guarantees such as, in particular, independence vis-à-vis the ecclesiastical authorities to which he is subject, the ability to devote himself entirely to practice of the profession of lawyer, the ability to handle contentious cases, actual establishment in the area of the court of first instance concerned and observance of the prohibition on providing services without remuneration.

19 The Symvoulío tis Epikrateias (Council of State) is uncertain as to the interpretation of Article 3 of Directive 98/5. In the light of the requirements arising from the national rules of professional conduct to which lawyers are subject in the host Member State — rules which do not permit a monk to practise as a lawyer — the referring court is unsure whether the competent national authority of that Member State is, nonetheless, required to register a monk with a view to him practising as a lawyer under the professional title obtained in the home Member State.

20 According to the referring court, that question arises all the more acutely since the competent authority of the host Member State would automatically have to find an infringement of those rules of professional conduct by the person concerned, pursuant to the national provision which establishes that the status of

monk does not allow the requirements and guarantees necessary for practice of the profession of lawyer in Greece to be satisfied.

21 In those circumstances, the Symvoulío tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is Article 3 of Directive [98/5] to be interpreted as meaning that the registration of a monk of the Church of Greece as a lawyer with the competent authority of a Member State other than that in which he obtained his professional qualification, in order for him to practise there under his home-country professional title, may be prohibited by the national legislature on the ground that monks of the Church of Greece cannot, under national law, be entered in the registers of bar associations since, on account of their status as persons under monastic discipline, they do not provide certain guarantees necessary for practice as a lawyer?’

### **Consideration of the question referred**

22 By its question, the referring court asks, in essence, whether Article 3(2) of Directive 98/5 must be interpreted as precluding national legislation which, on account of the incompatibility under that legislation between the status of monk and practice of the profession of lawyer, prohibits a lawyer who has the status of monk, and who is registered as a lawyer with the competent authority of the home Member State, from registering with the competent authority of the host Member State in order to practise there under his home-country professional title.

23 It should be noted at the outset that, by virtue of Article 1(1) of Directive 98/5, the purpose of that directive is to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained.

24 In that regard, the Court has already had occasion to hold that Directive 98/5 establishes a mechanism for the mutual recognition of the professional titles of lawyers who migrate and wish to practise under the professional title obtained in the home Member State (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 36 and the case-law cited).

25 Furthermore, as is clear from recital 6 of Directive 98/5, by that directive the EU legislature sought, inter alia, to put an end to the differences in national rules on the conditions for registration with the competent authorities, which gave rise to inequalities and obstacles to freedom of movement (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 37 and the case-law cited).

26 In that context, Article 3 of Directive 98/5 harmonises fully the preconditions for exercise of the right of establishment conferred by that directive, laying down that a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification is obliged to register with the competent authority of that Member State, which must effect that registration ‘upon presentation of a certificate attesting to his registration with the competent authority of the home Member State’ (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 38 and the case-law cited).

27 In that regard, the Court has already held that the presentation to the competent authority of the host Member State of a certificate attesting to registration with the competent authority of the home Member State is the only condition to which registration of the person concerned in the host Member State, enabling him to practise there under his home-country professional title, may be subject (judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraph 39 and the case-law cited).

28 Accordingly, it must be held that lawyers who have acquired the right to use that professional title in a Member State, such as the applicant in the main proceedings, and who present to the competent authority of the host Member State a certificate attesting to their registration with the competent authority of the first Member State must be regarded as satisfying all the conditions required for their registration with the

competent authority of the host Member State, under their professional title obtained in the home Member State.

- 29 That conclusion is not called into question by the fact that under Article 6(1) of Directive 98/5 a lawyer practising in the host Member State under his home-country professional title is, irrespective of the rules of professional conduct to which he is subject in his home Member State, subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities pursued in its territory.
- 30 A distinction should be drawn between, on the one hand, registration with the competent authority of the host Member State of a lawyer who wishes to practise in that Member State under his home-country professional title, a process which, in accordance with Article 3(2) of the directive, is subject solely to the condition referred to in paragraphs 26 to 28 above, and, on the other, the practice itself of the profession of lawyer in that Member State, in respect of which that lawyer is subject, by virtue of Article 6(1) of the directive, to the rules of professional conduct applicable in that Member State.
- 31 Those rules, unlike the rules concerning the preconditions for such registration, have not been harmonised and may therefore differ considerably from those in force in the home Member State. Moreover, as Article 7(1) of Directive 98/5 confirms, failure to comply with those rules is liable to lead to application of the penalties provided for in the law of the host Member State. Those penalties may, where appropriate, include removal from the register of the relevant bar in that Member State (see, to that effect, judgment of 2 December 2010, *Jakubowska*, C-225/09, EU:C:2010:729, paragraph 57).
- 32 In the present instance, it is apparent from the information provided by the referring court that, according to the competent authority of the host Member State, practice of the profession of lawyer by a monk would not be consistent with the guarantees, such as those referred to in paragraph 18 above, which, under the law of that Member State, are required for practice of that profession.
- 33 In that regard, it should be pointed out that it is permissible for the national legislature to prescribe such guarantees provided that the rules laid down for that purpose do not go beyond what is necessary in order to attain the objectives pursued. In particular, the absence of conflicts of interest is essential for practice of the profession of lawyer and requires, inter alia, that lawyers should be in a situation of independence vis-à-vis the authorities, by which they must never be influenced.
- 34 This power available to the national legislature nevertheless does not allow it to supplement the preconditions for registration with the competent authority of the host Member State — which, as noted in paragraph 26 above, have been fully harmonised — by adding further conditions that relate to compliance with requirements of professional conduct. If a lawyer wishing to practise in the host Member State under his home-country professional title were refused registration with the competent authorities of that Member State solely on the ground that he has the status of monk, that would effectively add a registration condition to those set out in Article 3(2) of Directive 98/5, whereas such addition is not permitted by that provision.
- 35 Furthermore, as has been pointed out in paragraph 33 above, in order for the rules of professional conduct applicable in the host Member State to be in compliance with EU law, they must in particular comply with the principle of proportionality, which means that they are not to go beyond what is necessary in order to attain the objectives pursued. It is for the referring court to carry out the necessary checks in respect of the rule regarding incompatibility at issue in the main proceedings.
- 36 In the light of all the foregoing considerations, the answer to the question referred is that Article 3(2) of Directive 98/5 must be interpreted as precluding national legislation which, on account of the incompatibility under that legislation between the status of monk and practice of the profession of lawyer, prohibits a lawyer who has the status of monk, and who is registered as a lawyer with the competent authority of the home Member State, from registering with the competent authority of the host Member State in order to practise there under his home-country professional title.

## Costs

- 37 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 (Grand Chamber) hereby rules:

**Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained must be interpreted as precluding national legislation which, on account of the incompatibility under that legislation between the status of monk and practice of the profession of lawyer, prohibits a lawyer who has the status of monk, and who is registered as a lawyer with the competent authority of the home Member State, from registering with the competent authority of the host Member State in order to practise there under his home-country professional title.**

[Signatures]

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\* Language of the case: Greek.