



JUDGMENT OF THE COURT

19 October 2023

(Freedom of establishment for lawyers – Legal aid – Established European lawyer – Consumer protection – Proper administration of justice – Exhaustive harmonisation – Articles 2 and 5 of Directive 98/5/EC)

In Case E-12/22,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*), in the case of

Dr Maximilian Maier,

concerning the interpretation 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, as adapted to the Agreement on the European Economic Area,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Siri Teigum (ad hoc), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Dr Maximilian Maier, attorney, represented by himself;

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch, Alissa Ender and Romina Schobel, acting as Agents;
- the Government of Austria, represented by Dr Albert Posch, Dr Julia Schmoll and Dr Elizaveta Samoilova, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Marte Brathovde, Erlend Møinichen Leonhardsen, Michael Sánchez Rydelski and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission (“the Commission”), represented by Lorna Armati and Mislav Mataija, acting as Agents;

having regard to the Report for the Hearing,

having heard the oral arguments of Dr Maximilian Maier, the Liechtenstein Government, represented by Romina Schobel, ESA, represented by Marte Brathovde, and the Commission, represented by Lorna Armati, at the hearing on 28 March 2023,

gives the following

Judgment

I Legal background

EEA law

- 1 Article 31(1) of the Agreement on the European Economic Area (“the EEA Agreement” or “EEA”) reads:

Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA State in the territory of any other of these States. This shall also apply to the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.

2 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) (“the Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 85/2002 of 25 June 2002 (OJ 2002 L 266, p. 50) and was inserted as point 2a of Annex VII (Mutual recognition of professional qualifications) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 9 January 2003. The decision entered into force on 1 March 2003.

3 Recital 6 of the Directive reads:

Whereas 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; whereas, 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; whereas 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; whereas 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;

4 Article 1(1) of the Directive, entitled “Object, scope and definitions”, reads:

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.

5 Article 2 of the Directive, entitled “Right to practise under the home-country professional title”, reads:

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.

Integration into the profession of lawyer in the host Member State shall be subject to Article 10.

6 Article 4 of the Directive, entitled “Practice under the home-country professional title”, reads:

1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional title to include a reference to his registration with the competent authority in that State.

7 Article 5 of the Directive, entitled “Area of activity”, reads:

1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an ‘avoué’ practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

8 Article 6 of the Directive, entitled “Rules of professional conduct applicable”, reads, in extract:

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.

....

3. The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

9 Article 10 of the Directive, entitled “Like treatment as a lawyer of the host Member State”, reads, in extract:

1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, ‘Effective and regular pursuit’ means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

...

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

...

National law

- 10 Article 1 of the Lawyers Act (*Rechtsanwaltsgesetz*) of 8 November 2013 (LGBI. 2013 No 415) (“the Lawyers Act”), entitled “Object and purpose”, reads, in extract:

1) The present Act shall regulate the admission to the lawyer’s profession as well as the practice of the lawyer’s profession in Liechtenstein.

2) It shall in particular transpose:

...

b) the 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 (EEA compendium of laws: Annex VII - 2a.01);

...

- 11 Article 3 of the Lawyers Act, entitled “Requirements to practise the lawyer’s profession”, reads, in extract:

1) No person shall be allowed to practise the lawyer’s profession, unless such person meets the requirements listed in paragraph 2 and has been entered in the register of Liechtenstein lawyers (register of lawyers).

2) The requirements pursuant to paragraph 1 shall be:

...

c) Liechtenstein citizenship or citizenship of another State that is a party to the Agreement on the European Economic Area (EEA) or a State deemed to be equivalent thereto under international treaties;

d) the successful taking of the bar exam (Rechtsanwaltsprüfung) or the aptitude test, or the exercise of an effective and regular activity for three years as provided for in Art. 74 et seqq.;

...

4) The documents as provided for in Annex VII of the Directive 2005/36/EC shall be equivalent to the evidence provided for in paragraph 2.

- 12 Article 21 of the Lawyers Act, entitled “Substitution”, reads:

1) If lawyers are prevented from performing their function, they may be substituted by another lawyer. In this process, their statutory liability shall be maintained.

2) If lawyers are permanently prevented from performing their function or if they are absent for a longer period of time, the Chamber of Lawyers shall be informed of the substitution, and the Chamber of Lawyers shall also inform the courts and administrative agencies thereof.

13 Article 28 of the Lawyers Act, entitled “Appointment of a lawyer”, reads:

1) If the court has decided to provide a lawyer, or if the grant of legal aid implicates any such provision, the party concerned shall be entitled to the appointment of a lawyer by the Chamber of Lawyers.

2) The board of the Chamber of Lawyers shall rely on fixed rules for the appointment; these shall ensure that the assignment of lawyers with membership in the Chamber of Lawyers to cases, and the distribution of their workload, is made as equally as possible.

14 Article 29 of the Lawyers Act, entitled “Acceptance of the case and grounds for refusal”, reads:

1) Lawyers appointed in accordance with Art. 28 shall accept the representation or defence of a party in line with the decision on their appointment and act in this regard with the same care as a freely chosen lawyer.

2) They shall have the right to refuse the acceptance of the case for important reasons or to demand the early dismissal as a lawyer appointed pursuant to Art. 28. Important reasons shall include in particular:

a) a conflict of interests;

b) a serious breakdown of the relationship of trust, if any such breakdown is asserted both by the party and by the appointed lawyer.

3) The board of the Chamber of Lawyers shall decide whether any of the important reasons set out in paragraph 2 applies.

15 Chapter III of the Lawyers Act concerns the establishment of lawyers from the EEA in Liechtenstein. Article 59 of the Lawyers Act, entitled “Basic principle”, reads:

1) Nationals of a State which is a party to the Agreement on the European Economic Area (EEA) who are authorised in their home State to practise the lawyer’s profession under any of the professional titles listed in the Annex to this Act, may

establish themselves on domestic territory to practise the lawyer’s profession, provided that they are entered in the register of established European lawyers (established European lawyers) upon application.

2) Apart from the rules of ethical conduct applicable in the home State, the established European lawyer shall, with regard to all activities that he or she exercises on domestic territory, be subject to the same rules of professional and ethical conduct as the domestic lawyers.

3) Nationals from other States may also establish themselves on domestic territory for the purposes of paragraphs 1 and 2 to practise the lawyer’s profession, provided that an international treaty to this effect has been entered into with these States. Art. 65 shall be excepted from this.

16 Article 62 of the Lawyers Act, entitled “Professional status”, reads:

1) Except as provided otherwise, the established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers.

2) An established European lawyer shall have the status of a lawyer entered in the register of lawyers. However, he or she is not authorised:

(a) to be elected as an officer of the Chamber of Lawyers;

(b) to train trainee lawyers;

(c) to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel.

17 Article 63 of the Lawyers Act, entitled “Domestic lawyer acting in conjunction with the established European lawyer (*Einvernehmensrechtsanwalt*)”, reads:

*1) In proceedings in which the party must be represented by a lawyer or in which a defence counsel is mandatory, an established European lawyer may act as representative or defence counsel of a party only in conjunction with a lawyer entered in the register of lawyers (*Einvernehmensrechtsanwalt* - domestic lawyer acting in conjunction with the established European lawyer). That lawyer must ensure that the established European lawyer will observe the requirements of proper administration of justice in the course of the representation or defence. Unless agreed otherwise by the parties involved, no contractual relationship shall be established between the domestic lawyer acting in conjunction with the established European lawyer and the party.*

2) *Proof of work in conjunction with each other shall be furnished to the court or the administrative agency in writing when the first procedural act is taken. The court or the administrative agency shall be informed of any revocation of the work in conjunction in writing. It shall have effect only for the future. Procedural acts for which no evidence of work in conjunction has been furnished at the time when such acts are taken shall not be deemed to have been taken by a lawyer. The domestic lawyer acting in conjunction with the established European lawyer shall inform the Chamber of Lawyers in writing both of the fact that work in conjunction has been established and of the fact that such work in conjunction may have been revoked.*

II Facts and procedure

- 18 Dr Maier is an Austrian national residing in Austria, and an Austrian lawyer entered in the register of lawyers in Vorarlberg, Austria. Following his request of 8 May 2021, Dr Maier was entered by the Liechtenstein Chamber of Lawyers in the register of established European lawyers in Liechtenstein on 7 June 2021. Dr Maier has law offices in Austria and Liechtenstein. He has represented clients in civil and criminal proceedings before courts and authorities in both countries.
- 19 On 5 April 2022, following a dispute between Dr Maier and the Chamber of Lawyers, in particular as to whether he was authorised to assume mandates of other Liechtenstein lawyers in the context of legal aid, the Chamber of Lawyers issued an order that, on the basis of Article 62(2)(c) of the Lawyers Act, Dr Maier as an established European lawyer is not authorised to accept mandates in the context of legal aid or to assume such mandates as a substitute. The prohibition on assuming a legal aid mandate as a substitute was justified on the basis that this was necessary to prevent a circumvention of the prohibition in Article 62(2)(c) of the Lawyers Act.
- 20 Dr Maier appealed the order to the Liechtenstein Government, which in its decision dated 29 June 2022, dismissed Dr Maier’s appeal. Dr Maier then brought an appeal against the decision of the Liechtenstein Government to the Administrative Court.
- 21 According to the Administrative Court, the courts in Liechtenstein may grant legal aid to any individual who is unable to pay the costs of the proceedings, whether they are civil, criminal, administrative or constitutional, and provide them with a lawyer as legal aid (i.e. legal aid lawyer, legal aid defence counsel or public defender, hereinafter referred to as “legal aid lawyer”). The costs of such a legal aid lawyer, notably their fee, are, at least temporarily, assumed by the State and paid directly to the legal aid lawyer.
- 22 Furthermore, according to the Administrative Court, Liechtenstein law distinguishes between acting as a lawyer’s representative and his substitute. A lawyer’s representative is an agent of the lawyer and does not act independently. The lawyer is required to duly select,

instruct and monitor the representative. In contrast, the substitute replaces, rather than represents, the lawyer and, consequently, the substitute acts independently. The substituted lawyer is only responsible for the proper selection of a substitute. The appointment as a legal aid lawyer can be financially attractive as the lawyer appointed is paid by Liechtenstein, even though the tariff is fixed. Acting as a substitute for a lawyer appointed by the court as a legal aid lawyer can also be financially attractive if the substituted lawyer and his substitute reach an appropriate financial agreement.

- 23 The Administrative Court considers that the prohibition in Article 62(2)(c) of the Lawyers Act hinders European lawyers established in Liechtenstein from freely pursuing their profession and does not appear to be based on the Directive. Therefore, the Administrative Court questions whether the freedoms guaranteed by the EEA Agreement and the Directive can be restricted beyond the Directive's wording in Article 62(2)(c) of the Lawyers Act for public interest reasons.
- 24 After staying the proceedings, on 26 September 2022, the Administrative Court requested an Advisory Opinion from the Court. The request was registered at the Court on 30 September 2022. The Administrative Court has submitted the following question to the Court:

Is a national provision, according to which a lawyer, who normally practises his profession in a Member State other than the one in which he obtained his qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender, compatible with Directive 98/5/EC?

- 25 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Answer of the Court

- 26 The referring court asks, in essence, whether the Directive must be interpreted as precluding a national provision, according to which a lawyer, who on a permanent basis practises the profession under the lawyer's home-country professional title in an EEA State other than the one in which the lawyer obtained the qualification, may not be appointed as a legal aid lawyer, legal aid defence counsel or public defender.
- 27 The Court recalls that Article 31(1) EEA outlines that the freedom of establishment includes the right to take up and pursue activities as self-employed persons. According to Article 1(1) of the Directive, its purpose is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in an EEA State other than that in which the professional qualification was obtained.

- 28 As is clear from recital 6 in the preamble to the Directive, one of the Directive’s objectives is to lay down the conditions governing the practice of the profession by lawyers practising under their home-country professional title, so as, first, to put an end to the diversity of national situations in that field and the resulting inequalities and obstacles to freedom of movement and, second, to afford the same opportunities to lawyers and consumers of legal services in all EEA States (compare the judgment in *Commission v Luxembourg*, C-193/05, EU:C:2006:588, paragraph 55).
- 29 Pursuant to Articles 2 and 5 of the Directive, any lawyer shall be entitled to pursue on a permanent basis, in any other EEA State, under the lawyer’s home-country professional title, the same professional activities as a lawyer practising under the relevant professional title in the host EEA State. The lawyer shall in any event comply with the rules applicable in the national courts. The provisions are intended, in particular, to facilitate practice as a self-employed lawyer, and to affirm the right, subject to certain exceptions, for any lawyer to pursue on a permanent basis, in any other EEA State, under the lawyer’s home-country professional title, the same professional activities as a lawyer practising under the relevant professional title of the host EEA State (compare the judgment in *Luxembourg v Parliament and Council*, C-168/98, EU:C:2000:598, paragraph 55).
- 30 According to the request, Liechtenstein law has provided in Article 62(1) and the first sentence of Article 62(2) of the Lawyers Act that an established European lawyer shall be authorised to engage in the same professional activities as any lawyer entered in the register of lawyers, and that an established European lawyer shall have the status of a lawyer entered in the register of lawyers. However, pursuant to Article 62(2)(c) of the Lawyers Act, European lawyers are not authorised to act as a legal aid lawyer. Therefore, the Chamber of Lawyers concludes that there is also a prohibition on European lawyers assuming a legal aid mandate as a substitute.
- 31 The Liechtenstein Government submits that, in the absence of the regulation of legal aid, including its structure and implementation, at EEA level, it is for EEA States to decide how to structure legal aid and who can be appointed as a legal aid lawyer. Therefore, according to the Liechtenstein Government, it was entitled to introduce the rule of Article 62(2)(c) of the Lawyers Act.
- 32 The Court observes that, in the absence of coordination at EEA level, EEA States may, subject to certain conditions, impose national measures pursuing a legitimate aim compatible with the EEA Agreement and justified on overriding public interest grounds, which include the protection of consumers and the proper administration of justice (compare the judgment in *Luxembourg v Parliament and Council*, cited above, paragraphs 32 and 33 and case law cited). However, the Directive harmonises the requirements which must be satisfied by lawyers wishing to pursue, under their home-country professional title, on a permanent basis, the professional activities of lawyers practising under the domestic professional title. Accordingly, if an EEA State organises its legal aid system in such a way

that acting as a legal aid lawyer is part of the professional activities of lawyers practising under the domestic professional title, the ability to assume such a legal aid mandate falls within the scope of Articles 2 and 5(1) of the Directive.

- 33 A rule such as Article 62(2)(c) of the Lawyers Act, which precludes European lawyers from being appointed as a legal aid lawyer, limits their right under Article 5(1) of the Directive to carry out the same professional activities under their home-country title as a lawyer practising under the domestic professional title.
- 34 Article 5(1) of the Directive allows EEA States to provide for certain exceptions from this right, which are set out in Article 5(2) and 5(3) of the Directive. Under Article 5(2), EEA States may exclude the preparation of deeds for obtaining title to administer estates of deceased persons and creating or transferring interests in land from the activities European lawyers are entitled to undertake. Under Article 5(3), EEA States may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question for the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State.
- 35 As stated in the request, Article 63 of the Lawyers Act sets out a restriction as provided for in Article 5(3) of the Directive. However, Article 62(2)(c) of the Lawyers Act does not correspond to any of the situations referred to in Article 5(2) or 5(3) of the Directive and precludes European lawyers from being appointed as a legal aid lawyer without exception.
- 36 In order to justify Article 62(2)(c) of the Lawyers Act, the Governments of Liechtenstein and Austria submit that Article 5 of the Directive does not fully harmonise and exclusively govern the professional activities of a lawyer practising under their home country professional title. On this basis, they contend that EEA States may set higher standards than those in the Directive. The protection of recipients of legal services and the proper administration of justice are objectives which qualify as overriding reasons in the public interest capable of justifying restrictions on the freedom of establishment. According to the Liechtenstein Government, in order to ensure the proper administration of justice and to comply with the fundamental right of access to justice and a fair trial as provided for, *inter alia*, in Article 6 of the European Convention on Human Rights, an EEA State must be able to ensure that a lawyer is well-versed in, and has an in-depth knowledge of, national law, as legal aid is primarily granted in cases with difficult legal and factual situations.
- 37 The Court observes that such considerations cannot be relied on to justify restrictions not provided for in the Directive. It follows from the wording of Article 5(1), the Directive’s objectives stated in recital 6, and the context of the relevant provisions that there are no further exceptions beyond those specified in Article 5(2) and 5(3). Article 5(1) states that the right is only “subject to paragraphs 2 and 3” and does not provide for any further

restrictions. Allowing for further exceptions would jeopardise the objective stated in recital 6 to put an end to the diversity of national situations and the resulting inequalities between lawyers and obstacles to freedom of movement.

- 38 Articles 4, 5, 6 and 7 of the Directive establish rules intended to protect consumers and to ensure the proper administration of justice. The Directive has not abolished the requirement that a European lawyer should know the national law applicable in the cases the lawyer handles but has simply released the lawyer from the obligation to prove that knowledge in advance. It has thus allowed, in some circumstances, gradual assimilation of knowledge through practice, that assimilation being made easier by experience of other laws gained in the home EEA State. The Directive also takes account of the dissuasive effect of the system of discipline and the rules of professional liability. One of the rules of professional conduct applicable to lawyers is an obligation, like that provided for in the Code of Conduct adopted by the Council of Bars and Law Societies of Europe (CCBE), breach of which may incur disciplinary sanctions, not to handle matters which the professionals concerned know or ought to know they are not competent to handle (compare the judgments in *Luxembourg v Parliament and Council*, cited above, paragraphs 33 to 43, *Commission v Luxembourg*, cited above, paragraphs 42 to 44, and *Wilson*, C-506/04, EU:C:2006:587, paragraphs 72 to 74). As Article 29(2) of the Lawyers Act allows for lawyers to refuse a legal aid case for important reasons, a legal aid lawyer should be able to comply with this professional conduct obligation also under existing national legislation. Therefore, the reasons of public interest invoked by the Liechtenstein Government with regard to the granting of legal aid are safeguarded within the framework of the Directive.
- 39 Although the rules of professional conduct have not been harmonised (compare the judgments in *Monachos Eirinaios*, C-431/17, EU:C:2019:368, paragraph 31, and *Jakubowska*, C-225/09, EU:C:2010:729, paragraph 57), the rules on access to pursue, on a permanent basis, the same professional activities as lawyers practising under the professional title of the host EEA State have been harmonised. The right provided for in Articles 2 and 5 of the Directive is subject to the exceptions laid down in Article 5(2) and 5(3). In these circumstances, EEA States are not authorised to provide in their national law for any exceptions to that principle other than those set out expressly and exhaustively in Article 5(2) and 5(3) of the Directive (compare the judgment in *Commission v Luxembourg*, cited above, paragraphs 56 to 57).
- 40 The Government of Austria submits that a European lawyer is free to gain full equality with lawyers of the host EEA State and thereby access to legal aid mandates after three years of effectively and regularly pursuing activity in the host EEA State's law in accordance with Article 10(1) of the Directive or in a shorter period by way of an aptitude assessment in accordance with Article 10(3). The Court observes, however, that, as is clear from Article 2 of the Directive, integration into the legal profession of the host State is an alternative to the right to pursue professional activities under the home-country professional title and therefore cannot justify a restriction which is not provided for in the

Directive. Rather, the Directive provides clear, separate and balanced rules for two distinct possibilities to pursue professional activities as an established lawyer in the host State.

- 41 For the reasons set out above, a national rule, which goes further than the exhaustive exceptions provided for in Article 5(2) and 5(3) of the Directive, prohibiting European lawyers from assuming a legal aid mandate is incompatible with the Directive. Therefore, the answer to the question referred must be that the Directive must be interpreted as precluding a national provision which prohibits a lawyer, who on a permanent basis practises the profession under the lawyer's home-country professional title in a host EEA State other than the one in which the lawyer obtained the qualification, from being appointed as a legal aid lawyer, legal aid defence counsel or public defender and which thereby goes beyond the exceptions provided for in Article 5(2) and 5(3) of the Directive.

IV Costs

- 42 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings 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

in answer to the question referred to it by the Administrative Court of the Principality of Liechtenstein hereby gives the following Advisory Opinion:

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 a national provision which prohibits a lawyer, who on a permanent basis practises the profession under the lawyer’s home-country professional title in a host EEA State other than the one in which the lawyer obtained the qualification, from being appointed as a legal aid lawyer, legal aid defence counsel or public defender and which thereby goes beyond the exceptions provided for in Article 5(2) and 5(3) of the Directive.

Páll Hreinsson

Bernd Hammermann

Siri Teigum

Delivered in open court in Luxembourg on 19 October 2023.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President