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Judgment in Case E-12/22 *Dr Maximillian Maier*

DIRECTIVE 98/5/EC PRECLUDES RESTRICTIONS ON A EUROPEAN LAWYER FROM BEING APPOINTED AS A LEGAL AID LAWYER, LEGAL AID DEFENCE COUNSEL OR EX OFFICIO DEFENCE COUNSEL

In a judgment delivered today, the Court answered a question referred to it by the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*) regarding 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 (“the Directive”).

The main proceedings concern the legal practice of Dr Maier, an Austrian national residing in Austria with law offices in Austria and Liechtenstein. The Liechtenstein Chamber of Lawyers admitted Dr Maier to their register of established European lawyers in Liechtenstein.

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 Liechtenstein 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. Article 62(2)(c) of the Lawyers Act provides that an established European lawyer is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or ex officio defence counsel. The prohibition on assuming a legal aid mandate as a substitute was justified on the basis that this was necessary to prevent circumvention of the afore mentioned prohibition in Article 62(2)(c) of the Lawyers Act.

Dr Maier appealed the order to the Liechtenstein Government, which dismissed Dr Maier’s appeal. Dr Maier then brought an appeal against that decision to the Administrative Court, which requested an Advisory Opinion from the Court.

The Court held that 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. Article 5(1) of the Directive allows EEA States to provide for certain exceptions from the right of European lawyers, to carry out the same professional activities under their home-country title as a lawyer practising under the domestic professional title, which are set out in Article 5(2) and (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.

The Court observed that 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 (3) of the Directive and precludes European lawyers from being appointed as a legal aid lawyer without exception.

The Court held that 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.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.

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