



The General Court erred in law in holding that the existence of a contract for the provision of lecturing services between a party and its lawyer infringes the requirement for a legal representative before the Courts of the European Union to be independent

The Court of Justice therefore sets aside the order under appeal

In the judgment in *Uniwersytet Wrocławski and Poland v REA* (Joined Cases C-515/17 P and C-561/17 P), delivered on 4 February 2020, the Court of Justice, sitting as the Grand Chamber, set aside the order of the General Court¹ which had dismissed as manifestly inadmissible the action brought by the University of Wrocław against the decisions of the Research Executive Agency (REA), on the ground that the legal adviser representing that university did not satisfy the condition of independence required by the Statute² of the Court of Justice of the European Union ('the Statute').

In connection with a research programme, the REA concluded a grant agreement with the University of Wrocław. However, it became apparent that the university was not observing the terms of that agreement, with the result that the REA terminated the agreement and sent three debit notes to the University of Wrocław, which that university paid.

The University of Wrocław then brought an action before the General Court seeking, inter alia, annulment of the decisions of the REA terminating the grant agreement and requiring it to repay a part of the subsidies. As the legal adviser representing the university was connected to that university by a contract for the provision of lecturing services, the General Court dismissed that action as manifestly inadmissible.

Hearing the appeals brought by the University of Wrocław (Case C-515/17 P) and the Republic of Poland (Case C-561/17 P), the Court of Justice recalled that Article 19 of the Statute contains two separate, but cumulative, conditions as regards the representation, in direct actions brought before the Courts of the European Union, of a party not covered by the first two paragraphs of that article. The first condition³ lays down the requirement for such a party to be represented by a 'lawyer' before the Courts of the European Union. The second condition⁴ 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 Agreement on the European Economic Area (EEA).

Noting that the second condition was satisfied by the University of Wrocław's legal adviser, the Court examined whether the first condition was satisfied in the case at hand.

It began by recalling that, there being no reference to the national law of the Member States, it was necessary to give an autonomous and uniform interpretation of the concept of 'lawyer' contained in Article 19 of the Statute, taking into account not only the wording of that provision, but also its context and purpose. In that regard, it emphasised that, according to the wording of that article, a 'party' not covered by the first two paragraphs thereof is not authorised to act on its own behalf

¹ Order of 13 June 2017, *Uniwersytet Wrocławski v REA* (T-137/16, not published).

² Article 19 of the Statute.

³ Set out in the third paragraph of Article 19 of the Statute.

⁴ Set out in the fourth paragraph of Article 19 of the Statute.

before a Court of the European Union, but must use the services of a third party, more specifically a lawyer, unlike the parties referred to in those first two paragraphs, who may be represented by an agent. The Court specified that the objective of the task of representation by a lawyer referred to in Article 19 of the Statute is, above all, 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. It recalled that the concept of the "independence of lawyers", in the specific context of that provision of the Statute, is determined not only negatively, that is to say, by the absence of an employment relationship, but also positively, by reference to professional ethical obligations. 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.

The Court recalled, in that regard, 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; nor is a lawyer who holds a high-level management position within the legal person he or she is representing, or a lawyer who holds shares in, and is the president of the board of administration of the company he or she is representing.

However, the situation in which 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. According to the Court, 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.

Consequently, the Court of Justice held that, by holding 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 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 had erred in law. Accordingly, the Court of Justice set aside the order under appeal and referred the case back to the General Court.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the decision of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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