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LET LAWYERS BE LAWYERS: ON REPRESENTATION OF LAW FIRMS BEFORE THE CJEU

Che gli avvocati facciano gli avvocati: la rappresentanza degli studi legali davanti alla CGUE

Laissez les avocats être des avocats : de la représentation en justice des cabinets d'avocats devant la CJUE

Opinion of Advocate General Richard de la Tour, 27 February 2025, case C-776/22 P, *Studio Legale Ughi e Nunziante v EUIPO*

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The *Studio Legale Ughi e Nunziante* case might not ring any bell, and yet, it could bring important changes to the table with regard to legal representation of non-privileged applicants in direct actions before the Court of Justice of the European Union ("CJEU").

The Opinion on the case came on February 27th, 2025[1], with Advocate General ("AG") Richard de la Tour encouraging the Court of Justice to revise the interpretation of the independence requirement for lawyers pursuant to art. 19 of the Statute of the CJEU ("the Statute").

Before delving into the merit of AG Richard de la Tour's reasoning, it is essential to take a step back and briefly retrace the previous phases of this case.

The background of the case

Studio Legale Ughi e Nunziante is an Italian law firm which, in 2022, brought an action before the General Court asking for the annulment of a decision of the fifth board of appeal of EUIPO[2]. In doing so, Studio Legal Ughi e Nunziante was represented by three of its practising lawyers.

[1] Opinion of Advocate General Richard de la Tour, 27 February 2025, case C-776/22 P, *Studio Legale Ughi e Nunziante*, ECLI:EU:C:2025:123.

[2] The decision revoked the use of the trademark «Ughi e Nunziante» for all legal

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Pursuant to art. 126 of its rules of procedure, the General Court declared the case inadmissible due to the fact that: *i)* being the applicant a law firm, lawyers working for it could not represent it before the General Court because they were not third parties according to art. 19 par. 3 of the Statute; and, *ii)* lawyers representing Studio Legale Ughi e Nunziante were not independent, according to the notion developed by the case-law of the CJEU.

Against such decision, the applicant lodged an appeal before the Court of Justice, which, according to art. 58a of the Statute, had to assess the preliminary admissibility of the appeal: indeed, the General Court's decision concerned a decision of an independent board of appeal and the appeal was therefore subject to the filter mechanism introduced with the reform of the Statute in 2019[3].

As it is known, art. 58a of the Statute introduces a procedural limitation to appeals, granting their admissibility only when they raise «an issue that is significant with respect to the unity, consistency or development of Union law» and lays the duty to prove such significance on the applicant.

In the case at stake, Studio Legale Ughi e Nunziante submitted three grounds of appeal claiming the infringement by the General Court of: a) artt. 119 and 126 of the rules of procedure ("GC RP"), due to the lack of an adequate statement of reasons; b) art. 19 of the Statute and 51 of the GC RP, since the General Court did not comply with the case-law of the Court of Justice relating to the requirement of independence of lawyers; and c) artt. 47 and 52 of the Charter of Fundamental Rights of the European Union ("the Charter"), given that, by declaring the claim manifestly inadmissible, it undermined the applicant's right of access to justice.

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services, with some limited exceptions, and was issued on April 8th, 2022.

[3] For some recent analyses on the scope of application of the filter mechanism see, *inter alia*: L. DE LUCIA, *New developments concerning article 58a of the Statute of the Court of Justice of the European Union*, in *EU Law Live*, 21 March 2024; R. TORRESAN, *Filtering appeals over decision originally taken by Boards of Appeal: rationale, impact and potential evolution of article 58a of the CJEU Statute*, in *RCE*, 2024, p. 129 ff.; M. COLI, *La Corte di giustizia si pronuncia sul primo pourvoi ammesso ai sensi dell'articolo 58 bis dello Statuto e conferma il carattere restrittivo del "filtro" sulle impugnazioni*, in *RCE*, 2024, p. 205 ff.; P. IANNUCCELLI, *L'ammissione preventiva delle impugnazioni contro le decisioni del Tribunale dell'Unione europea* ex *art. 58*-bis *dello Statuto: una prima valutazione e le eventuali applicazioni future*, in C. AMALFITANO, M. CONDINANZI (a cura di), *Il giudice dell'Unione europea alla ricerca di un assetto efficiente e (in)stabile: dall'incremento della composizione alla modifica delle competenze*, Milano, 2022, p. 117 ff.

On May 8th, 2023, the competent chamber of the Court of Justice[4] held that the second and third grounds of appeal did satisfy the requirements provided for by art. 58a of the Statute and granted the appeal[5].

Fast forward almost two years, the AG's Opinion on the merit of the appeal is worth some reflection.

The «independence» requirement

While art. 19 of the Statute simply states that non-privileged applicants in direct actions «must be represented by a lawyer», the CJEU has interpreted such provision highlighting that it prohibits self-representation (namely the lawyer must be a third party to the client) and that lawyers must be independent from their clients[6].

The main issues relate to, on the one hand, the notion of «independence» in itself and, on the other hand, the consequences that a negative assessment on the compliance to such requirement have on the action pursued by the applicant.

Originally, the Court of Justice requested that lawyers had no connections whatsoever with the clients they were representing. However, following the stream of case-law which such strict interpretation harvested[7], the Court of Justice partially followed AG Michal Bobek's

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[4] Court of Justice, 8 May 2023, Case C-776/22 P, *Studio Legale Ughi e Nunziante*, ECLI:EU:C:2023:441.

[5] For a brief overview of the order, see: F. BANDINI, *L'indipendenza dell'avvocato e il diritto ad un ricorso effettivo in una recente pronuncia della CGUE sull'ammissibilità dell'impugnazione ex art. 58 bis dello Statuto*, in *RCE*, 2023, p. 89 ff. It might be worth noticing that this is not the first case where the Court of Justice admits an appeal pursuant to art. 58a of the Statute on the issue of legal representation. The same occurred, for example, with the *bonnanwalt* case (C-580/22 P) where the Court of Justice annulled the General Court's decision on the basis of its wrongful application of the «positive» definition of independence, without analysing the aspect of the compatibility of the declaration of inadmissibility of the action with article 47 of the Charter.

[6] Court of Justice, 5 December 1996, Case C-174/96 P, *Orlando Lopes*, ECLI:EU:C:1996:473; Court of Justice, 16 March 2006, Case C-200/05 P, *Carlos Correia de Matos*, ECLI:EU:C:2006:187; Court of Justice, 20 October 2022, Case C-79/22 P, *Carlos Correia de Matos*, ECLI:EU:C:2023:258.

[7] See, *inter alia*: General Court, 19 November 2009, Case T- 94/07, *European Renewable Energies Federation ASBL (EREF) c. Commissione delle comunità europee*, ECLI:EU:T:2009:451; General Court, 23 May 2011, Case T-226/10, *Prezes Urzędu Komunicacji Elektronicznej*, ECLI:EU:T:2011:234; General Court, 6 September 2011, Case T-452/10, *ClientEarth*, ECLI:EU:T:2011:420; Court of Justice, 6 September 2012, Joined Cases C-422/11 P and C- 423/11 P, *Prezes Urzędu Komunicacji Elektronicznej*,

opinion[8] and, in *Uniwersytet Wroclawski*[9], re-oriented its view, specifying that the notion of independence hinders two aspects which must both be taken into account. In fact, on the one side, there cannot be an employment relationship between the lawyer and the client («negative» definition of independence), but, on the other side, in all other cases, only connections which are detrimental to the interests of the clients shall be deemed non-compliant with art. 19 of the Statute («positive» definition of independence).

However, this re-orientation did not concern the effects of an action submitted by a lawyer who is not independent according to the CJEU's case-law: up until now, the consequence is the automatic declaration of inadmissibility of the action, leaving the applicant with little to no chance to remedy the irregularity.

In other words, the independence requested of lawyers seems to have become a *de facto* condition of admissibility of direct actions for non-privileged applicants, who are not only required to comply with the strict limits imposed by the Treaties, for example in actions for annulment pursuant to art. 263 TFEU, but also with an additional non-written barrier.

The problem is even more manifest when applicants are law firms, given that each Member State has a different approach in regulating the profession: is a lawyer who work for a firm independent enough to represent the law firm itself? Does the national regulation of the profession play a role in determining whether the independence requirement is complied with?

These are some of the questions that made the Court of Justice recognize the importance of the matter for the unity, coherence and development of EU law leading to the Opinion which will now be analysed.

AG Richard de la Tour's Opinion

The arguments raised by AG Richard de la Tour follow the path already drawn by both AG Michal Bobek in *Uniwersytet Wroclawski* and AG

ECLI:EU:C:2012:553; Court of Justice, 5 September 2013, Case C-573/11 P, *ClientEarth c. Consiglio dell'Unione europea*, ECLI:EU:C:2013:564; Court of Justice, 4 December 2014, Case C-259/14 P, *ADR Center Srl*, ECLI:EU:C:2014:2417.

[8] Opinion of Advocate General Michal Bobek, 24 September 2019, joined cases C-515/17 P and C-561/17 P, *Uniwersytet Wroclawski v. REA,* ECLI:EU:C:2019:774.

[9] Court of Justice, 4 February 2020, joined cases C-515/17 P and C-561/17 P), *Uniwersytet Wroclawski v. REA,* ECLI:EU:C:2020:73.

Nicholas Emiliou in *Universität Bremen*[10], which, over the years, have advocated for a new reading of art. 19, parr. 3-4 of the Statute, more compliant with the right of effective judicial protection (art. 47 of the Charter).

In his evaluation of the second ground of appeal (*i.e.*, violation of art. 19 of the Statute and 51 GC RP), the AG recalls the previous case-law of the Court of Justice underlining that lawyers must be a third party to their clients: there are no exceptions to this rule and, therefore, lawyers cannot represent themselves even though they fit within the requirements provided for by art. 19, par. 4 of the Statute. Hence, a law firm cannot be assisted by its legal representative.

Additionally, recalling the distinction between «negative» and «positive» definition of the independence requirement, AG Richard de la Tour highlights that the Court of Justice clarified that the evaluation on the latter can lead to a declaration of inadmissibility only in a restricted number of cases, namely when the lawyer is not in the position to defend the interests of the client. In other words, only where there are serious and proven reasons to doubt the ability of the lawyer to perform his services, the Court of Justice (or the General Court) shall be allowed to dismiss the claim on the grounds of inadmissibility due to the non-compliance with art. 19, par. 4 of the Statute.

According to the General Court, the lawyers representing Studio Legale Ughi e Nunziante are not independent because they are partners of the law firm.

In the AG's view, this laconic affirmation aggravates excessively the representation requirements required by art. 19 of the Statute and, what's more, determines an inversion in the case-law of the Court of Justice: while the Court of Justice relies on a presumption of independence, the General Court determines a presumption of dependency.

Moreover, the General Court seems to ground its decision on the principle of equal treatment: the fact that even lawyers who are part of a law firm are assisted by a third party would create a level playing field between all parties in presenting their defences irrespective of their personal qualifications.

AG Richard de la Tour dismisses such argument, stating that, indeed, this approach is even stricter than the one applied to other parties because it does not take into account the peculiarities that a law firm presents in comparison to any other legal person: preventing all lawyers in any manner

[10] Opinion of Advocate General Nicholas Emiliou, 24 February 2022, case C-110/21 P, *Universität Bremen v. REA*, ECLI:EU:C:2022:133.

associated to a law firm – and not only its legal representatives[11] – to represent the firm before the CJEU is an extremely restrictive approach that does not even mirror the practice of most Member States (more in particularly, the Italian one), where law normally introduces an exemption in the representation requirement when the party is a lawyer.

In light of the above, AG Richard de la Tour suggests to re-evaluate the situation of Studio Legale Ughi e Nunziante, bearing in mind that 1) lawyers representing such firm are not its legal representatives, 2) in Italy lawyers cannot be employed by law firms, since registration to the bar association is incompatible with any employment relationship; and 3) the Italian code of conduct for lawyers requires that they do not offer legal services when they might have a conflict of interests.

With regard to the third ground of appeal (*i.e.* violation of art. 47 and 52 of the Charter), Advocate General Richard de la Tour is clear: the automatic dismissal of the action is not compatible with the right of access to justice as per art. 47 of the Charter.

The reasoning followed by the AG is quite similar to the one suggested by AG Michal Bobek in *Uniwersytet Wroclawski*, enriched by the most recent case-law of the CJEU on legal representation[12], which underlines that its purpose is to ensure the proper administration of justice as well as protecting the interests of the individual. Accordingly, the applicant should be granted the right to rectify its application. Otherwise, the situation would be paradoxical and private parties which are required to be represented by a lawyer (a right recognized under art. 47 of the Charter) would definitively lose their right of access to justice because of the choice of the lawyer, a choice that they are not even offered the chance to correct, following the decision on the compliance with the independence requirement by the Kirchberg courts.

In addition, neither the Statute nor the rules of procedure of both the General Court and the Court of Justice expressly foresee a declaration of inadmissibility as a consequence to the non-compliance with the requirement of independence of the lawyer, nor such effect can be derived from the Practice Rules for implementation of the rules of procedure,

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[11] It must be borne in mind that the notion of legal representatives of a law firm may vary depending on national legislation. In the Italian system, for example, lawyers cannot be employed by law firm but only practice law in the form of a professional association, where the legal representative is the managing partner.

[12] Court of Justice, 26 September 2024, case C-423/23, *Ordre des avocats du barreau de Luxembourg*, ECLI:EU:C:2024:791; Court of Justice, 2 October 2024, case T-789/22, *Ordre des avocats à la cour de Paris et Couturier*, ECLI:EU:T:2024:671.

since they are simply measures intended to help parties and lawyers navigate the procedure before the General Court.

Coherently, AG Richard de la Tour proposes to change the stance taken by the Court of Justice in *PJ*[13], where it established that the Statute and the rules of procedure list the situations in which certain formalities can be regularized, but this is not the case for the lack of independence of lawyers.

According to the AG, in fact, this approach is incompatible with art. 47 of the Charter: the absence in the wording of the sources of EU procedural law of a solution to the assessed non-independence of a lawyer derives automatically from the absence of such requirement in those same sources. In other words: the law does not prescribe the requirement and, therefore, does not envisage a solution for the non-compliance to that requirement.

The way forward

Particularly the last twenty points of AG Richard de la Tour's Opinion show a passionate strive for a definitive change in the approach to the independence requirement.

Coherently with the decision to admit the appeal, it can be expected that the Court of Justice will at least partially follow on the AG's footsteps, given that it might not be in the spirit of the filter mechanism to uphold appeals on issues which are non-problematic, just to simply confirm the previous case-law without any additional clarification.

Several aspects would, indeed, need further analysis by the Kirchberg judges.

The first one relates to the scope of application of the Court of Justice's re-orientation towards the requirement of independence.

As the present case clearly shows, the General Court has yet to start abiding by this re-orientation and, even though it is not required that the General Court follows the Court of Justice's case-law passively, still a different standard in assessing representation before the two compositions of the CJEU jeopardizes certainty of EU law and affects the length of judicial proceedings.

Secondly, the Court of Justice shall definitively clarify the rationale behind the independence requirement. All issues seem to derive from the nature of the role that lawyers should play before the CJEU. Indeed, the case-law has so far identified a tension: lawyers are either considered

[13] Court of Justice, 24 March 2022, joined cases C-529/18 P and C-531/18 P, *PJ*, ECLI:EU:C:2022:218.

cooperators in the correct administration of justice or representatives and protectors of their clients' interests.

And yet, these aspects should be two sides of the same coin: it would certainly be hard to ensure the correct administration of justice without lawyers granting their clients an appropriate protection of their rights.

In fact, protecting the interests of non-privileged applicants in a courtroom means allowing them to benefit and exercise their right to an effective judicial protection, something that should be regarded as linked to the proper administration of justice.

Accordingly, allowing a private party to rectify the choice of lawyer would both protect the party's interests and ensure a proper administration of justice: a «win-win» move that the Court of Justice has no reason to oppose.

On the contrary, perpetrating the compatibility with EU procedural law of the automatic declaration of inadmissibility deriving from the non-compliance with a praetorian requirement would hinder a major threat to the right of access to court as well as to the right to an effective remedy. It must, in fact, be borne in mind that in most of the cases, the declaration of inadmissibility will be issued once the deadline for submitting an application in a direct action has already expired, leading to a consequence which might be more detrimental than the lack of independence itself.

At a more general level, the case at stake, even though referring to the peculiar situation of law firms, could present the Court of Justice with the opportunity to entirely rethink the notion of independence up to the point where the Court of Justice could establish that judges should solely check the compliance with the prohibition of self-representation and that lawyers do not act in a manner which is against the client's interests or incompatible with the proper administration of justice.

Only in these cases lawyers should be excluded from representing their clients, in line with what the rules of procedure (art. 46 CJ RP, art. 55 GC RP) foresee for conducts which are kept during the proceeding (and not at its beginning) and applicants should be granted the same remedy provided therein: the suspension of the proceeding in order to allow the party to appoint a new lawyer.

Contrary to the argument raised by the General Court, a strict interpretation of the independence requirement not only does not put all parties at the same footing but actually creates an even deeper distinction between non-privileged and privileged applicants, given that the latter are represented before the CJEU by their agents, namely persons who are employed by them and whose independence from the applicant is surely not assessed.

In light of this, what could prevent a simpler interpretation of art. 19, par. 3 of the Statute? One that solely requires private parties to be represented by lawyers, meaning one that imposes technical representation? Maybe the Court of Justice can help with this and let lawyers be lawyers.