

JUDGMENT OF THE COURT (Grand Chamber)

17 July 2014 (*)

(Reference for a preliminary ruling — Freedom of movement for persons — Access to the profession of lawyer — Possibility of refusing registration in the Bar Council register to nationals of a Member State who have obtained their professional legal qualification in another Member State — Abuse of rights)

In Joined Cases C-58/13 and C-59/13,

REQUESTS for a preliminary ruling under Article 267 TFEU, from the Consiglio Nazionale Forense (Italy), made by decision of 29 September 2012, received at the Court on 4 February 2013, in the proceedings

Angelo Alberto Torresi (C-58/13),

Pierfrancesco Torresi (C-59/13)

v

Consiglio dell'Ordine degli Avvocati di Macerata,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen (Rapporteur), E. Juhász and M. Safjan (Presidents of Chambers), A. Rosas, D. Šváby, M. Berger, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 11 February 2014,

after considering the observations submitted on behalf of:

- Mr A. Torresi and Mr P. Torresi, by C. Torresi, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato,
- the Spanish Government, by A. Rubio González and S. Centeno Huerta, acting as Agents,
- the Austrian Government, by A. Posch, acting as Agent,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Romanian Government, by R.-H. Radu, R.-I. Hatieganu and A.-L. Crișan, acting as Agents,
- the European Parliament, by M. Gómez-Leal and L. Visaggio, acting as Agents,

- the Council of the European Union, by A. Vitro and P. Mahnič Bruni, acting as Agents,
 - the European Commission, by E. Montaguti and H. Støvlbæk, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 10 April 2014,
gives the following

Judgment

- 1 The requests for a preliminary ruling concern the interpretation and validity 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 requests were made in two actions brought respectively by Mr Angelo Alberto Torresi and Mr Pierfrancesco Torresi ('the applicants in the main proceedings') against the Consiglio dell'Ordine degli Avvocati di Macerata ('the Bar Council of Macerata') concerning the latter's refusal to grant their applications for registration in the special section of the lawyers' register.

Legal context

European Union law

- 3 Recital 6 in the preamble to the Directive 98/5 is worded as follows:

'... 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'.
- 4 Article 1(1) of Directive 98/5 provides that the purpose of the 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 The first paragraph of Article 2 of Directive 98/5, that article being headed 'Right to practise under the home-country professional title', provides:

'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(1) and (2) of that directive, that article being headed 'Registration with the competent authority', provide:

‘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. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.’

Italian law

7 The Italian Republic transposed Directive 98/5 into national law by means of Legislative Decree No 96 of 2 February 2001 (ordinary supplement to GURI No 79 of 4 April 2001; ‘Legislative Decree No 96/2001’). Article 6 of that decree, headed ‘Registration’, states:

‘1. For the purposes of the practice in Italy of the profession of lawyer on a permanent basis, the nationals of Member States who are holders of one of the titles referred to in Article 2 shall be obliged to register in a special section of the register constituted in the district of the court or tribunal in which they have established, permanently, their professional residence or domicile, with due regard to the legislation relating to social security obligations.

2. Registration in the special section of the register is subject to the condition that the applicant is registered with the competent professional body in the home Member State.

3: The application for registration must be accompanied by the following documents:

(a) certificate of nationality of a European Union Member State or a declaration in place of a certificate;

(b) certificate of residence or declaration in place of a certificate, or applicant’s declaration containing an indication of professional domicile;

(c) a certificate attesting to registration with the professional body of the home Member State, issued not more than three months before the date of submission, or declaration in place of certificate.

...

6. In the 30 days following the date of submission of the application or any additions thereto, the Bar Council, after determining that the necessary conditions are satisfied and provided that there is no disqualifying factor to preclude it, shall order registration in the special section of the register and shall notify the corresponding authority in home Member State of that registration.

7. The application may not be rejected without the applicant first having being given the opportunity to be heard. Reasons for the decision must be stated and, within a period of 15 days, must be communicated in their entirety to the applicant and to the Procurator of the Republic ...

8. If the Bar Council has not issued its decision on the application within the period prescribed in paragraph 6, the person concerned may, within the period of ten days following the expiry of that period, bring an action before the Consiglio Nazionale Forense [National Bar Council] which shall rule on the substance of the application.

9. By means of registration in the special section of the register, the established lawyer shall have voting rights, but shall have no right to stand for elected office.

...

- 8 Under Royal decree law No 1578 of 27 November 1933, converted, after amendments, by Law No 36 of 1934, as later amended (*Gazzetta Ufficiale* No 24 of 30 January 1934), all decisions of the Consiglio Nazionale Forense may be subject to appeal on grounds of lawfulness before the combined chambers of the Corte suprema di cassazione (Supreme Court of Appeal).

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 9 After the applicants in the main proceedings had each obtained a university law degree in Italy, they each obtained a university law degree in Spain and were registered, on 1 December 2011, as lawyers in the register of the Ilustre Colegio de Abogados de Santa Cruz de Tenerife (Bar of Santa Cruz de Tenerife, Spain).
- 10 On 17 March 2012 the applicants in the main proceedings, pursuant to Article 6 of Legislative Decree No 96/2001, lodged with the Bar Council of Macerata applications for registration in the special section of the lawyers' register relating to lawyers holding a professional title issued in a Member State other than the Italian Republic and established in the Italian Republic ('lawyers qualified abroad').
- 11 The Bar Council of Macerata gave no decision on the applications for registration within the period of 30 days laid down by Article 6(6) of Legislative Decree No 96/2001.
- 12 Accordingly, by actions lodged on 19 and 20 April 2012 respectively, the applicants in the main proceedings sought from the Consiglio Nazionale Forense a ruling on their applications for registration. In support of their actions, they claimed that the registrations applied for were subject to the single condition required by the legislation in force, namely the presentation of 'a certificate attesting to registration with the competent authority in the home Member State', which, in this case, is the Kingdom of Spain.
- 13 The Consiglio Nazionale Forense considers however that the situation of a person who, after he or she has obtained a legal qualification in one Member State, travels to another Member State in order to obtain there the title of lawyer with a view to returning immediately to the former Member State and entering into professional practice there, seems at odds with the objectives of Directive 98/5 and may constitute an abuse of rights.
- 14 The Consiglio Nazionale Forense has doubts concerning the interpretation and validity of Article 3 of Directive 98/5 and, since the Court has held that it can competently lodge a request for a preliminary ruling (the judgment in *Gebhard*, C-55/94, EU:C:1995:411), it decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:
- '1. In the light of the general principle which prohibits any abuse of rights and Article 4(2) TEU, relating to respect for national identities, is Article 3 of [Directive 98/5] to be interpreted as obliging national administrative authorities to register, in the register of lawyers qualified abroad, Italian nationals who have conducted themselves in a manner which abuses EU law, and as precluding a national practice which allows such authorities to reject applications for registration in the register of lawyers qualified abroad where there are objective circumstances to indicate that there has been an abuse of EU law, without prejudice to respect for the principles of proportionality and non-discrimination and to the right of the person concerned to institute legal

proceedings in order to argue a possible infringement of the right of establishment and, consequently, the possibility of judicial review of the administrative action in question?

2. If the first question should be answered in the negative, is Article 3 of [Directive 98/5], thus interpreted, to be regarded as invalid in the light of Article 4(2) TEU, in that it permits circumvention of the rules of a Member State which make access to the legal profession conditional on passing a State examination, given that the Constitution of that Member State makes provision for such an examination and that the examination forms part of the fundamental principles of protecting consumers of legal services and the proper administration of justice?

Consideration of the questions referred for a preliminary ruling

Whether the Court has jurisdiction

- 15 As a preliminary matter, the applicants in the main proceedings submit, inter alia, that the Consiglio Nazionale Forense is not a judicial body and that it is therefore not entitled to refer questions for a preliminary ruling under Article 267 TFEU. In particular, they claim that the Consiglio Nazionale Forense exercises judicial functions only when it acts in connection with a disciplinary matter and not when it is maintaining the registers of lawyers, a matter in which it exercises only a purely administrative function. Thus, where a case is brought before the Consiglio Nazionale Forense under Article 6(8) of Legislative Decree No 96/2001, it is called upon to make a decision on registration as an administrative body hierarchically ranked above the local Bar Council which failed to make a decision before the expiry of the time-limit laid down in Article 6(6) of that decree.
- 16 The applicants in the main proceedings also argue, relying on the judgment in *Wilson*, C-506/04, EU:C:2006:587, that the Consiglio Nazionale Forense does not meet the condition of impartiality since its members are lawyers elected by each local Bar Council, including the Bar Council which is a party to proceedings. Consequently, there is a risk that the disposal of the question submitted to it may be influenced by practical considerations, such as an interest in restricting registration, rather than informed by application of the rule of law.
- 17 In that regard, it must be recalled that, in accordance with settled case-law of the Court, in order to determine whether a body making a reference is a 'court or tribunal' for the purposes of Article 267 TFEU, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, inter alia, the judgments in *Miles and Others*, C-196/09, EU:C:2011:388, paragraph 37 and case-law cited, and *Belov*, C-394/11, EU:C:2013:48, paragraph 38).
- 18 As regards, more specifically, the independence of the body making a reference, that condition presumes that the body is protected against external intervention or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them (see *Wilson*, EU:C:2006:587, paragraph 51).
- 19 Further, in order to establish whether a national body, entrusted by law with different categories of function, is to be regarded as a 'court or tribunal' within the meaning of Article 267 TFEU, it is necessary to determine in what specific capacity it is acting within the particular legal context in which it seeks a ruling from the Court. A national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (see *Belov*, EU:C:2013:48, paragraphs 39 and 41).

- 20 As regards the first five factors referred to in paragraph 17 of this judgment, it is clear from the file before the Court that the Consiglio Nazionale Forense has been established by law and is permanent. Further, since the jurisdiction of the Consiglio Nazionale Forense to rule on actions brought against decisions adopted by local Bar Councils is laid down by statute, since that jurisdiction is not optional and since the decisions which the Consiglio Nazionale Forense makes in exercising that jurisdiction are enforceable, it follows that the jurisdiction of that body is compulsory. Last, it is common ground that, first, the procedure applicable before the Consiglio Nazionale Forense, which is largely inspired by rules of civil procedure, is *inter partes* at the stages both of written and oral pleadings and, second, the Consiglio Nazionale Forense applies rules of law.
- 21 As regards the requirement of independence, it must, first, be observed that it is clear from, inter alia, the information provided by the Italian Government that, while the Consiglio Nazionale Forense is a body composed of council members elected, from among those lawyers who are entitled to plead before the Corte suprema di cassazione, by members of the various local Bar Councils, the members of the latter councils being themselves elected by the lawyers registered in the register of the Bar concerned, membership of a local Bar Council is a disqualification, in particular, for being a member of the national council.
- 22 Secondly, it is evident that the Consiglio Nazionale Forense is subject to safeguards laid down by the Italian Constitution in relation to the independence and impartiality of the court. In exercising its functions the Consiglio Nazionale Forense is wholly autonomous, it is not subordinate to any other body and it does not take orders or instructions from any source whatsoever. Further, the provisions of the Italian Code of civil procedure in relation to abstention and recusal are fully applicable to it.
- 23 Thirdly, as confirmed by the Italian Government at the hearing, unlike the local Bar Council which, in proceedings brought against its decision, is a party to those proceedings before the Consiglio Nazionale Forense, the Consiglio Nazionale Forense may not be a party to the proceedings brought before the Corte suprema di cassazione against its decision ruling on the action brought against the Bar Council concerned. The Consiglio Nazionale Forense is therefore, as required by the Court's case-law (see *Wilson*, EU:C:2006:587, paragraph 49), acting as a third party in relation to the authority which adopted the decision against which proceedings were brought.
- 24 Last, it is clear from the file that it is standard practice that the national council member whose own registration is with the Bar Council to which the application for registration was made does not take part as a member of the Consiglio Nazionale Forense formation of judgment, without prejudice to the full applicability of the rules governing abstention and recusal laid down by the Italian Code of Civil Procedure. At the hearing, the Italian Government stated that, while one of the members of the Consiglio Nazionale Forense was registered with the Bar Council of Macerata, he abstained however from participating in the proceedings which concerned the applicants in the main proceedings.
- 25 In those circumstances, it must be held that the Consiglio Nazionale Forense meets the requirements of independence and impartiality which are characteristic of a court or tribunal within the meaning of Article 267 TFEU.
- 26 As regards the requirement stated in paragraph 19 of this judgment, namely the requirement that a body referring questions to the Court may only do so when exercising a judicial function, it is clear that, contrary to what is claimed by the applicants in the main proceedings, where an action is brought before the Consiglio Nazionale Forense, pursuant to Article 6(8) of Legislative Decree No 96/2001, against the absence of a Bar Council decision within the period of 30 days following the date of submission of an application for registration in the special section of the Bar register, the Consiglio Nazionale Forense is not restricted to

making a decision on that application in the place of the Bar Council concerned. As is apparent from, inter alia, the explanations provided by the Italian Government and the minutes of the hearings relating to the actions brought by the applicants in the main proceedings against the Bar Council of Macerata, which took place on 29 September 2012 before the Consiglio Nazionale Forense, the Consiglio Nazionale Forense is called upon to rule on the question of whether the implied decision of the Bar Council concerned, in so far as it rejects the application for registration of the party concerned, is well founded. In that event, if the action is upheld, the Consiglio Nazionale Forense is required to rule on the substance of the application for registration.

- 27 It is also common ground that the bringing of an action under Article 6(8) of Legislative Decree No 96/2001 gives rise to a procedure in which the parties are called upon to set out their arguments in writing and orally, at a public hearing and with legal representation. The State Prosecutor intervenes at the hearing to submit his opinion. In this case, it is clear from the minutes mentioned in the preceding paragraph that the State Prosecutor contended that the actions of the applicants in the main proceedings should be dismissed. The Consiglio Nazionale Forense gives its ruling after deliberation in chambers, issuing a decision which has not only the form and the content of a judgment delivered in the name of the Italian people, but is also designated as such.
- 28 Last, as stated in paragraph 23 of this judgment, while the local Bar Council whose decision is the subject of an action before the Consiglio Nazionale Forense is a party to proceedings before the Consiglio Nazionale Forense, when the latter's decision ruling on that action is, in its turn, the subject of an action before the Corte suprema di cassazione, the Consiglio Nazionale Forense is not party to the proceedings before the Corte suprema di cassazione. In fact, as is apparent in particular from the judgment of that court, delivered in combined chambers on 22 December 2011, which is referred to by the applicants in the main proceedings in their written observations, it is the Bar Council concerned which remains party to the proceedings before the Corte suprema di cassazione.
- 29 It follows that, in this instance, there is indeed a case pending before the Consiglio Nazionale Forense and it is called upon to give a ruling within proceedings intended to result in a decision that is of a judicial nature.
- 30 In the light of all the foregoing, it must be held that the Consiglio Nazionale Forense, in so far as it undertakes a review under Article 6(8) of Legislative Decree No 96/2001, constitutes a court or tribunal for the purpose of Article 267 TFEU and that, consequently, the Court has jurisdiction to answer the questions referred to it.

Admissibility of the questions referred for a preliminary ruling

- 31 The applicants in the main proceedings and the Council of the European Union submit that, having regard to the unequivocal case-law of the Court in this field, the questions raised by the Consiglio Nazionale Forense fall within the doctrine of *acte éclairé* and are, consequently, inadmissible.
- 32 In that regard, it must be borne in mind that, even when there is case-law of the Court resolving the point of law at issue, national courts and tribunals remain entirely at liberty to bring a matter before the Court if they consider it appropriate to do so (see the judgment in *Cilfit and Others*, 283/81, EU:C:1982:335, paragraphs 13 to 15), and the fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (see, to that effect, the judgment in *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 32).

33 It follows that the requests for a preliminary ruling are admissible.

The first question

34 By its first question, the referring court seeks in essence to ascertain whether Article 3 of Directive 98/5 must be interpreted as precluding the competent authorities of a Member State from refusing, on the ground of a claimed abuse of rights, registration in the register of lawyers qualified abroad to nationals of that Member State who, after obtaining a university degree in that Member State, have travelled to another Member State in order to acquire there the professional qualification of lawyer and have subsequently returned to the former Member State with a view to practising there the profession of lawyer under the professional title obtained in the Member State where the professional qualification was obtained.

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

36 In that regard, the Court has already had occasion to hold that that directive establishes a mechanism for the mutual recognition of the professional titles of migrant lawyers wishing to practise under their professional title obtained in the home Member State (see the judgment in *Luxembourg v Parliament and Council*, C-168/98, EU:C:2000:598, paragraph 56).

37 Further, as is clear from recital (6) in the preamble to 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 (see the judgment in *Commission v Luxembourg*, C-193/05, EU:C:2006:588, paragraph 34, and *Wilson*, EU:C:2006:587, paragraph 64).

38 In that context, Article 3 of Directive 98/5 undertakes a complete harmonisation of the preliminary conditions required for the exercise of the right of establishment conferred by that directive, providing 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 in 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' (see, to that effect, *Commission v Luxembourg*, EU:C:2006:588, paragraphs 35 and 36, and *Wilson*, EU:C:2006:587, paragraphs 65 and 66).

39 In that regard, the Court has previously ruled 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 may be subject, enabling him to practise in the latter Member State under his home-country professional title (see *Commission v Luxembourg*, EU:C:2006:588, paragraph 37, and *Wilson*, EU:C:2006:587, paragraph 67).

40 Consequently, it must be stated that nationals of a Member State, such as the applicants in the main proceedings, who present to the competent authority of that Member State a certificate attesting to their registration with the competent authority of another Member State, must, in principle, be regarded as satisfying all the conditions required for their registration, under their professional titles obtained in the latter Member State, in the former Member State's register of lawyers qualified abroad.

41 However, in the view of the referring court, it was not open to the applicants in the main proceedings, in this case, to rely on Article 3 of Directive 98/5, since the acquisition of the professional qualification of lawyer in a Member State other than the Italian Republic had, it

is argued, no other purpose than to evade the application of the law of the Italian Republic governing access to the profession of lawyer and thereby constituted an abuse of the right of establishment, contrary to the objectives of that directive.

- 42 In that regard, it must be recalled that, in accordance with settled case-law of the Court, EU law cannot be relied on for abusive or fraudulent ends (see, inter alia, the judgments in *Halifax and Others*, C-255/02, EU:C:2006:121, paragraph 68, and *SICES and Others*, C-155/13, EU:C:2014:145, paragraph 29).
- 43 In particular, with regard to combating abuse of freedom of establishment, a Member State is entitled to take measures designed to prevent certain of its nationals from attempting, under cover of the rights created by the FEU Treaty, improperly to circumvent the rules of their national legislation (see the judgment in *Inspire Art*, C-167/01, EU:C:2003:512, paragraph 136).
- 44 A finding of abuse requires a combination of objective and subjective elements (see *SICES and Others*, EU:C:2014:145, paragraph 31).
- 45 With regard to the objective element, it must be apparent from a combination of objective circumstances that, despite formal observance of the conditions laid down by EU rules, the purpose of those rules has not been achieved (see *SICES and Others*, EU:C:2014:145, paragraph 32 and case-law cited).
- 46 As regards the subjective element, it must be apparent that there is an intention to obtain an improper advantage from the EU rules by artificially creating the conditions laid down for obtaining it (see, to that effect, the judgment in *O. and B.*, C-456/12, EU:C:2014:135, paragraph 58 and case-law cited).
- 47 As stated in paragraph 35 of this judgment, the purpose of Directive 98/5 is to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained.
- 48 In that regard, it must be held that the right of nationals of a Member State to choose, on the one hand, the Member State in which they wish to acquire their professional qualifications and, on the other, the Member State in which they intend to practise their profession is inherent in the exercise, in a single market, of the fundamental freedoms guaranteed by the Treaties (see, to that effect, the judgment in *Commission v Spain*, C-286/06, EU:C:2008:586, paragraph 72).
- 49 Accordingly, the fact that a national of a Member State who has obtained a university degree in that State travels to another Member State, in order to acquire there the professional qualification of lawyer, and subsequently returns to the Member State of which he is a national in order to practise the profession of lawyer under the professional title obtained in the Member State where that qualification was acquired, constitutes one of the possible situations where the objective of Directive 98/5 is achieved and cannot constitute, in itself, an abuse of the right of establishment stemming from Article 3 of Directive 98/5.
- 50 Further, the fact that the national of a Member State has chosen to acquire a professional qualification in a Member State other than that in which he resides in order to benefit there from more favourable legislation is not, in itself, as stated by the Advocate General in points 91 and 92 of his Opinion, sufficient ground to conclude that there is an abuse of rights.
- 51 Further, that finding cannot be called into question by the fact that the submission of the application for registration in the register of lawyers qualified abroad held by the competent authority of the host Member State took place soon after the professional title was obtained

in the home Member State. As stated by the Advocate General in points 93 and 94 of his Opinion, there is no provision in Article 3 of Directive 98/5 to the effect that the registration of a lawyer wishing to practise in a Member State other than that in which he acquired his professional qualification with the competent authority of the host Member State may be subject to the condition that a period of practical experience as a lawyer in the home Member State has been completed.

- 52 In the light of all the foregoing, the answer to the question referred is that Article 3 of Directive 98/5 must be interpreted as meaning that no abuse can be identified in the fact that a national of a Member State who has successfully obtained a university degree in that State travels to another Member State in order to acquire there the professional qualification of lawyer and subsequently returns to the Member State of which he is a national in order to practise there the profession of lawyer under the professional title obtained in the Member State where that professional qualification was acquired.

The second question

- 53 By its second question, the referring court seeks in essence to ascertain whether Article 3 of Directive 98/5 is invalid in light of Article 4(2) TEU.

- 54 In that regard it must first be stated that the European Union is required, under Article 4(2) TEU, to respect the national identity of the Member States, inherent in their fundamental structures, political and constitutional.

- 55 The Consiglio Nazionale Forense considers that the effect of Article 3 of Directive 98/5, in so far as it enables Italian nationals who obtain their professional legal qualification in a Member State other than the Italian Republic to practise their profession in the Italian Republic, is to circumvent Article 33(5) of the Italian Constitution, under which access to the profession of lawyer is dependent on having successfully passed a State examination. Consequently, that provision of European Union secondary law, since it permits the circumvention of rules which form part of the Italian national identity, is contrary to Article 4(2) TEU and should therefore be held to be invalid.

- 56 In that regard, it must be observed that Article 3 of Directive 98/5 concerns solely the right of establishment in a Member State in order to practise the profession of lawyer under the professional title obtained in the home Member State. That provision does not regulate access to the profession of lawyer nor the practice of that profession under the professional title issued in the host Member State.

- 57 It necessarily follows that an application for registration in the register of lawyers qualified abroad, submitted pursuant to Article 3 of Directive 98/5, is not such as to make it possible to evade the application of the legislation of the host Member State relating to access to the profession of lawyer.

- 58 Consequently, as acknowledged by the Italian Government at the hearing, it must be held that Article 3 of Directive 98/5, in so far as it enables nationals of a Member State who obtain the professional title of lawyer in another Member State to practise the profession of lawyer in the State of which they are nationals under the professional title obtained in the home Member State, is not, in any event, capable of affecting either the fundamental political and constitutional structures or the essential functions of the host Member State within the meaning of Article 4(2) TEU.

- 59 It follows that examination of the second question referred has disclosed nothing capable of affecting the validity of Article 3 of Directive 98/5.

Costs

- 60 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. 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:

- 1. Article 3 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 meaning that no abuse can be identified in the fact that a national of a Member State who after successfully obtaining a university degree travels to another Member State in order to acquire there the professional qualification of lawyer and returns to the Member State of which he is a national in order to practise there the profession of lawyer under the professional title obtained in the Member State where that professional qualification was acquired.**
- 2. Examination of the second question referred has disclosed nothing capable of affecting the validity of Article 3 of Directive 98/5.**

[Signatures]

* Language of the case: Italian.