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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

3 April 2025 (\*)

( Reference for a preliminary ruling – Freedom of movement for workers – Article 45 TFEU – Lawyers – Lawyer training – Territorial restrictions – National legislation requiring the completion of part of the training period of a trainee lawyer with a lawyer having his or her registered office in the national territory )

In Case C807/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 16 October 2023, received at the Court on 29 December 2023, in the proceedings

**Katharina Plavec**

v

**Rechtsanwaltskammer Wien,**

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin (Rapporteur), N. Piçarra, O. Spineanu-Matei and N. Fenger, Judges,

Advocate General: P. Pikamäe,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 27 November 2024,

after considering the observations submitted on behalf of:

- Ms Plavec, by S. Schwab and J. P. Willheim, Rechtsanwälte,
- the Rechtsanwaltskammer Wien, by R. Gerlach, Rechtsanwalt, and T. Simek,

- the Austrian Government, by A. Posch, A. Bell, G. Eberhard and P. Thalmann, acting as Agents,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the Swedish Government, by H. Eklinder, acting as Agent,
- the European Commission, by B.-R. Killmann and J. Szczodrowski, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU.

2 The request has been made in proceedings between Ms Katharina Plavec and the Rechtsanwaltskammer Wien (Vienna Bar Association, Austria; ‘the RAK’) concerning the rejection of Ms Plavec’s application in which she sought, first, to be included in the list of trainee lawyers and, second, to be issued a certificate of admission to appear and plead before a court indicating partial entitlement to act for the purposes of Paragraph 15(3) of the Rechtsanwaltsordnung (Lawyers Code) of 15 July 1868 (RGBl. No 96/1868) in the version of 20 April 2023 (BGBl. I, 39/2023; ‘the RAO’).

## **Legal context**

### ***European Union law***

3 Article 45 TFEU provides:

- ‘1. Freedom of movement for workers shall be secured within the [European] Union.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

...’

4 Recital 1 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) states:

‘Whereas, pursuant to Article [26 TFEU], the internal market is to comprise an area without internal frontiers; whereas, pursuant to Article [4(2)(a) TFEU], the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the [European Union]; whereas, for nationals of the Member States, this means among other things the possibility of practising a profession, whether in a self-employed or a salaried capacity, in a Member State other than that in which they obtained their professional qualifications’.

5 Article 1(1) of that directive provides:

‘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.’

6 Article 10(1) of that directive provides:

‘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 [Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16)], "Effective and regular pursuit" means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

...'

### ***Austrian law***

7 Under Paragraph 2 of the RAO:

'(1) The practical training required to be admitted to practise as a lawyer shall consist in working as a legal professional at a court, or with a public prosecution office, or with a lawyer; moreover, it may also consist in working as a legal professional with a notary, or with an administrative body, at a university, or with a chartered accountant or tax adviser if the work is conducive to practising as a lawyer. ... Working with a lawyer will qualify as practical training only if this activity is pursued as a primary occupation and is not affected by any other occupational activity; ...

(2) The practical training as defined in subparagraph 1 shall cover a period of five years; a minimum of seven months of this period shall be spent working at a court or a public prosecution office in Austria and a minimum of three years with a lawyer in Austria.

(3) The following activities shall also be taken into account for the purposes of the duration of the practical training that need not necessarily be spent at a court or a public prosecution office or with a lawyer in Austria:

...

2. a practical training period abroad equivalent to the training as defined in subparagraph 1, provided that this activity is conducive to practising as a lawyer;

3. any other practice as a legal professional in Austria or abroad, provided that such activity has been conducive to practising as a lawyer and a duly qualified person or body shall be liable for that practice.

The board of the bar shall adopt guidelines defining the requirements to be met in order for the practical training defined in points 2 and 3 to be taken into account and the extent to which it will be taken into account; ... The guidelines shall be published on the website of the bar and remain there on a permanent basis.

...'

8 Paragraph 15(3) and (4) of the RAO provides:

'(3) Where representation by a lawyer is not a statutory requirement, the lawyer may be substituted before all courts and authorities by any other trainee lawyer working for him or her, while remaining liable for the representation provided by that trainee lawyer; however, the trainee lawyer shall not be permitted to sign any submissions to courts or authorities.

(4) The board of a bar shall issue certificates of admission to appear and plead before a court to the trainee lawyers working for a lawyer, which indicate ... the partial entitlement to act on behalf of another lawyer pursuant to subparagraph 3.'

9 Paragraph 30(1) of the RAO is worded as follows:

‘In order to be registered in the list of trainee lawyers, a notice shall be sent to the board when commencing practical training with a lawyer, accompanied by proof of Austrian nationality, nationality of a Member State of the European Union or of another State party to the European Economic Area Agreement or of the Swiss Confederation, as well as proof of having completed studies of Austrian law ... The period of practical training with a lawyer will be calculated only as of the date on which that notice is received.

...’

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

10 Ms Plavec worked as an employee at the law firm Jones Day in Frankfurt am Main (Germany) from January 2022, where she was completing a period of training with KI, an Austrian lawyer who was a partner at that firm. By email of 14 January 2022, she applied to the RAK seeking to be included in the list of trainee lawyers and be issued a certificate of admission to appear and plead before a court indicating partial entitlement to act for the purposes of Paragraph 15(3) of the RAO.

11 At the RAK’s request, Ms Plavec provided the following details by letter of 7 March 2022. Her domicile and habitual residence were in Frankfurt am Main, and she had a secondary residence in Vienna (Austria). Her activity focused solely on Austrian law. Her supervisor, KI, was the only person authorised to give her instructions regarding matters involving Austrian law, and he provided advice on Austrian law to the Austrian and foreign clients of the law firm Jones Day and represented them before Austrian administrative bodies and courts. During her period of training, Ms Plavec had contact with Austrian bodies and courts several times a week during which she represented KI’s clients.

12 By decision of 14 June 2022, the competent department of the RAK, pursuant to Paragraph 30(1) of the RAO, read together with Paragraph 2(2) thereof, rejected Ms Plavec’s application on the grounds that her training was not carried out with a lawyer established in Austria.

13 On 31 August 2022, Ms Plavec left the law firm Jones Day.

14 By decision of 6 September 2022, the board of the RAK rejected the complaint lodged against the decision of 14 June 2022. The decision of 6 September 2022 states, inter alia, that KI is a member of the board of examiners for the entrance examinations to be admitted as a lawyer in Austria and that he acts as a lawyer appointed to represent litigants in Austria under the system of legal aid. Accordingly, in addition to the office located in Frankfurt am Main, KI has an office located in Vienna, for which he has appointed another Austrian lawyer as a substitute under the RAO. He was declared absent from 15 November 2016 on the basis that he was spending a period of time abroad.

15 Ms Plavec and KI appealed against the decision of 6 September 2022 before the Oberster Gerichtshof (Supreme Court, Austria), which is the referring court, seeking that that decision be annulled and that the RAK be ordered to include Ms Plavec on the list of trainee lawyers for the period from 14 January 2022 to 31 August 2022.

16 The referring court states that the subject matter before it now relates only to the question of whether and, as the case may be, for how long, the conditions for being included on the list of trainee lawyers had been met by Ms Plavec, since she left the law firm Jones Day on 31 August 2022. Furthermore, since KI had no personal interest in seeing Ms Plavec retroactively being included on the list of trainee lawyers, the referring court dismissed his appeal as inadmissible.

17 The referring court notes that it follows from Paragraph 2(2) and Paragraph 30(1) of the RAO, read together, that, out of a total period of five years of compulsory practical training to qualify as a lawyer, a period of at least three years and seven months must be completed in Austria, of which at least three years must be with a lawyer. That court notes that, where the place of work of a trainee lawyer is outside Austria,

the competent Austrian bar association cannot visit the office where that trainee lawyer is working in order to fulfil its statutory duty to monitor the trainee lawyer and the supervising lawyer who is under an obligation to ensure the full training of that trainee lawyer for the legal profession.

18 The referring court states that, under point 2 of Paragraph 2(3) of the RAO, the part of Ms Plavec's training completed with KI may, however, be taken into account as part of the training which may be completed abroad.

19 As regards the facts of the dispute before it, the referring court notes that Ms Plavec's training was not carried out in Austria, although she worked under the supervision of a lawyer admitted to an Austrian bar and in the field of Austrian law.

20 The referring court submits that the question arises whether national provisions providing that part of the practical training period of a trainee lawyer must necessarily be spent within the national territory are incompatible with the free movement of workers, while another part of that period may be spent abroad.

21 It submits that such provisions are, in any event, appropriate and consistent with the values protected by EU law. In that regard, it emphasises, in particular, that Article 10(1) of Directive 98/5 makes access to the profession of lawyer in a host Member State of a lawyer practising under the professional title issued by his or her Member State of origin subject to proof of effective and regular pursuit for a period of at least three years in that first Member State. If that requirement of practical experience in a host Member State is applicable to lawyers who already have a qualification authorising them to practise their profession in their Member State of origin and who have already practised there, access for trainee lawyers to the legal profession could a fortiori be subject to such a requirement.

22 Furthermore, the referring court notes that an activity such as that carried out by Ms Plavec in Frankfurt am Main cannot, even taking into account modern means of communication, involve a level of contact with Austrian courts and administrative bodies commensurate with training in a law firm established in Austria. Furthermore, it seems unlikely that Ms Plavec intended to travel specifically from Frankfurt am Main to participate in proceedings before Austrian courts and administrative bodies, in view of the fact that the certificate of admission to appear and plead before a court which she sought to obtain confers only a very limited right of representation, namely in civil law disputes which primarily fall within the jurisdiction of the Bezirksgerichte (district courts, Austria). Lastly, Ms Plavec's supervisor mainly practised Austrian arbitration law, whereas supervisors must, under the RAO, ensure the full training of trainee lawyers.

23 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 45 TFEU on freedom of movement for workers be interpreted as precluding national legislation under which, as a condition for inclusion in the list of Austrian trainee lawyers, part of the practical training (training period) of a trainee lawyer must be completed as a trainee lawyer with a lawyer established in Austria, that is to say, within the national territory ..., whereas, for that part of the practical training ..., activity for a lawyer established in another Member State [of the European Union] is not sufficient, even if that activity is carried out there under the supervision of a lawyer admitted in Austria practising in the field of Austrian law?'

### **Consideration of the question referred**

24 By its question, the referring court asks, in essence, whether Article 45 TFEU must be interpreted as precluding legislation of a Member State which requires a specific part of practical training, which is necessary in order to be admitted to practise as a lawyer and during which the trainee lawyer has some

power to act as a legal representative before the courts of that Member State, to be completed with a lawyer established in that Member State, while precluding the possibility of that part being completed with a lawyer established in another Member State, even though that lawyer is admitted in the first Member State and the activities carried out in the context of that training relate to the law of that first Member State.

25 In that regard, it should be borne in mind that, in the absence of harmonisation of the conditions of access to a particular occupation, the Member States are entitled to lay down the knowledge and qualifications needed in order to pursue that occupation (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 24 and the case-law cited).

26 Since the conditions for access to the profession of lawyer of a person who has not been authorised in any Member State to exercise that profession, have not, up to the present time, been harmonised at EU level, the Member States retain the power to define those conditions (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 25).

27 It follows that EU law does not preclude legislation of a Member State from making access to the profession of lawyer contingent on the possession of the knowledge and qualifications deemed to be necessary (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 26), which may include the completion of a practical training period.

28 However, the Member States must exercise their powers in this area in a manner which respects the basic freedoms guaranteed by the FEU Treaty and provisions of national law adopted in that connection must not constitute an unjustified obstacle to the effective exercise of the fundamental freedom guaranteed, in particular, by Article 45 TFEU (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 27 and the case-law cited).

29 It must be stated that the legislation of a Member State, such as that at issue in the main proceedings, falls within the scope of Article 45 TFEU, even if it governs a period of practice which forms part of the training to be admitted to practise as a lawyer, where the lawyers concerned carry out their training activity as employees receiving remuneration (see, by analogy, judgment of 13 November 2003, *Morgenbesser*, C313/01, EU:C:2003:612, paragraph 60). In the present case, it is apparent from the file before the Court that Ms Plavec was remunerated during her period of training at Jones Day.

30 According to settled case-law, all the provisions of the FEU Treaty relating to freedom of movement for persons, including Article 45 TFEU, are intended to facilitate the pursuit by EU nationals of occupational activities of all kinds throughout the European Union, and preclude measures which might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (judgment of 16 November 2023, *Commission v Netherlands (Transfer of the value of pension rights)*, C459/22, EU:C:2023:878, paragraph 29 and the case-law cited).

31 Thus, national provisions which preclude or deter a national of a Member State from leaving his or her country of origin in order to exercise his or her right to freedom of movement constitute restrictions on that freedom, even if they apply without regard to the nationality of the workers concerned (judgment of 11 July 2019, *A*, C716/17, EU:C:2019:598, paragraph 17 and the case-law cited).

32 Furthermore, the Court has held previously that Article 45 TFEU precludes, in principle, a national measure, related to the conditions under which professional experience, acquired in a Member State other than the Member State which enacted the measure, for the purpose of access to the profession of lawyer, may be taken into account, where that measure is liable to hinder or make less attractive the exercise by EU nationals, including those of the Member State which enacted the measure, of the fundamental freedoms enshrined in the FEU Treaty (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034,

paragraph 30). The same applies to national legislation which precludes the taking into account of professional experience to be acquired during a specific part of practical training that is necessary to be admitted to practise as a lawyer solely on the ground that that part of the training is carried out with a lawyer established in another Member State.

33 It follows that the legislation of a Member State, such as that at issue in the main proceedings, which requires that a specific part of the practical training necessary to be admitted to practise as a lawyer be carried out with a lawyer established in that Member State, does indeed constitute a restriction on the freedom of movement guaranteed under Article 45 TFEU, since it may hinder or make less attractive the exercise of that freedom of movement, by placing a restriction on the possibility for those nationals to pursue their professional activity, as trainee lawyers, with a lawyer established in another Member State.

34 Contrary to the Austrian Government's submission in its written observations, that finding is not invalidated by the fact that, under that legislation, a period of training of several months abroad may be recognised as constituting another part of the practical training. Since it is stated that the three years of practical training with a lawyer, which correspond to the part of the training at issue in the main proceedings, must necessarily be carried out with a lawyer established in Austria, that legislation prevents those who have studied law and wish to be admitted to practise as lawyers wishing to access the legal profession from availing themselves of their right to free movement guaranteed under Article 45 TFEU during that final part of the practical training.

35 Such a restriction on the freedom of movement may be permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 32 and the case-law cited).

36 The referring court notes, in essence, that the legislation at issue in the main proceedings pursues the objectives of protecting the recipients of legal services and the proper administration of justice. Those objectives feature among those which may be regarded as overriding reasons in the public interest capable of justifying restrictions on the free movement for workers (judgment of 17 December 2020, *Onofrei*, C218/19, EU:C:2020:1034, paragraph 34 and the case-law cited).

37 Furthermore, the legislation of a Member State which makes the right to be included in the list of trainee lawyers subject to a condition that part of the practical training is spent with a lawyer established in that Member State does not appear, as such, to be unsuitable for securing the attainment of those objectives.

38 First, such legislation may help to ensure that a person who has studied law who wishes to be admitted to practise as a lawyer in a Member State gains, before being able to pursue that profession, actual experience of the practice of law in that Member State and of the rules which apply to lawyers and the customs which govern their relations with the courts and authorities of that Member State. Second, the competent authorities will, as a matter of course, therefore be able to monitor more easily the conditions under which such practical training is carried out and, in particular, the extent to which the content of that training is in line with the requirements under national law. In particular, legislation such as that at issue in the main proceedings is, as noted by the referring court, such as to allow the competent Austrian bar association, in the context of its statutory duty to monitor both the trainee lawyer and the supervising lawyer, to access the latter's office in order to ensure that the trainee lawyer's training corresponds to the requirements specific to the practice of the legal profession.

39 However, it must be found that the condition that a person who has studied law must complete a specific part of his or her practical training with a lawyer established in the Member State concerned – in so

far as it seeks, as is apparent from the file before the Court, to ensure that he or she has gained satisfactory experience of the practice of national law and of contact with the Austrian authorities and courts, in order to secure the attainment of the objectives of protecting those who receive legal services and of the proper administration of justice pursued by the national legislation at issue in the main proceedings – goes beyond what is necessary to attain those objectives.

40 Indeed, the completion by those who have studied law of practical training with a lawyer who is admitted to an Austrian bar but established in another Member State, together with the requirement to prove to the competent national authorities that that training is such as to provide access to experience equivalent to that provided by practical training with a lawyer established in Austria, constitutes a measure enabling the objectives pursued by legislation such as that at issue in the main proceedings to be attained, which seems less restrictive than the restriction imposed by that legislation.

41 In that regard, it should be noted, in the first place, that it cannot, as a general rule, be assumed that someone who has studied law who carries out practical training with a lawyer admitted to an Austrian bar, but established in another Member State, will not receive adequate training nor gain sufficient experience in the practice of Austrian law equivalent to that which someone who has studied law who carries out practical training in Austria would obtain. In those circumstances, a requirement to provide sufficient evidence that the activities actually carried out during such practical training are such as to provide training and experience equivalent to that provided by practical training with a lawyer established in Austria seems capable of ensuring that the objectives of that training have actually been attained.

42 In the second place, in the context of legislation such as that referred to in paragraph 40 of the present judgment, the competent authorities remain able to carry out effective controls regarding the conditions under which the training is carried out.

43 First of all, those authorities are free, if they consider it useful in view of the information at their disposal, to request to speak to the trainee lawyer and his or her supervisor in order to obtain clarifications on the progress of the practical training, where appropriate by ordering the suspension of that training or refusing to take it into account if they refuse to respond to that request. It is also apparent from the statements made by the RAK during the hearing before the Court that it issues such requests where justifiable doubts arise as to whether, in individual cases, the requirements for the training of trainee lawyers for admission to practise as lawyers have been met.

44 Next, since, in the situation referred to by the referring court, both the trainee lawyer and the supervisor are admitted to a bar association in the Member State in which the training to be admitted to practise as a lawyer is governed, the regulatory authorities are, as a matter of course, competent to impose disciplinary sanctions on both of them in the event that they seek to mislead the competent authorities as to the content of the practical training or if they fail to comply with the supervision measures put in place to ensure that the training is carried out properly.

45 Lastly, while it is true that, within the framework of legislation such as that referred to in paragraph 40 of the present judgment, the competent authorities are not necessarily able to access the supervisor's office for monitoring purposes, such access cannot be considered essential for the purposes of meeting the objectives of the legislation at issue in the main proceedings. It is also apparent from the information provided by the RAK during the hearing that, in practice, it uses less restrictive supervision measures than on-site inspections in law firms to assess whether the objectives of the practical training have been attained.

46 The fact that, under Austrian law, the trainee lawyer has, after a period of 18 months of practical training with a lawyer established in Austria, a very broad power to act as a legal representative is not such as to call into question the above, since, in accordance with legislation such as that referred to in



paragraph 40 of the present judgment, the experience that someone who has studied law would gain after having completed that practical training period with a lawyer established in another Member State would be equivalent to that acquired by the end of the same period by a trainee lawyer carrying out his or her practical training with a lawyer established in Austria.

47 Furthermore, since the referring court submits that the legislation at issue in the main proceedings is based on a logic comparable to that enshrined in Article 10(1) of Directive 98/5, the Court finds that the choice made by the EU legislature as far as concerns the measures which Member States are empowered to impose on lawyers who have obtained their professional qualification in another Member State and who wish to practise their profession in their territory, when it adopted that directive, is not capable of restricting the application of the provisions of the FEU Treaty to a situation not covered by the scope of that directive.

48 In the light of all the foregoing considerations, the answer to the question referred is that Article 45 TFEU must be interpreted as precluding legislation of a Member State which requires a specific part of practical training, which is necessary in order to be admitted to practise as a lawyer and during which the trainee lawyer has some power to act as a legal representative before the courts of that Member State, to be completed with a lawyer established in that Member State, while precluding the possibility of that part being completed with a lawyer established in another Member State, even though that lawyer is admitted in the first Member State and the activities carried out in the context of that training relate to the law of that first Member State, and therefore not allowing the persons who have studied law concerned to complete that part of that training period in another Member State on the condition that they prove to the competent national authorities that that part of the training as will be completed by him or her is capable of providing them with training and experience equivalent to that provided by practical training with a lawyer established in the first Member State.

#### **Costs**

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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.

On those grounds, the Court (Third Chamber) hereby rules:

#### **Article 45 TFEU**

**must be interpreted as precluding legislation of a Member State which requires a specific part of practical training, which is necessary in order to be admitted to practise as a lawyer and during which the trainee lawyer has some power to act as a legal representative before the courts of that Member State, to be completed with a lawyer established in that Member State, while precluding the possibility of that part being completed with a lawyer established in another Member State, even though that lawyer is admitted in the first Member State and the activities carried out in the context of that training relate to the law of that first Member State, and therefore not allowing the persons who have studied law concerned to complete that part of that training period in another Member State on the condition that they prove to the competent national authorities that that part of the training as will be completed by him or her is capable of providing them with training and experience equivalent to that provided by practical training with a lawyer established in the first Member State.**

[Signatures]

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 \* Language of the case: German.

