

## European Court of Justice rules on barrister language test

*English barrister Graham Wilson last week won a case he brought against the local Bar Council (Ordre des Avocats du Barreau du Luxembourg) in the European Court of Justice. The court's decision ruled that the Council had no right to oblige lawyers to pass a language test before they could practise at the bar in Luxembourg courts. Duncan Roberts reports.*



*Guy Ludovissy, Louise Benjamin and Graham Wilson (left to right)*

The European Court of Justice ruling in favour of Graham Wilson last week has been met with mixed reaction in Luxembourg, to say the least. The ruling was based on the provisions of a 1998 EU Directive that sought to enforce pan-European recognition of legal qualifications. The directive stipulates that access to the bar in any member state can be open to barristers either via a locally devised test or by the acquisition of three years experience in the host country. Up until this point, the Grand Duchy's legal profession had been hostile to foreign advocates joining the bar. Even after last week's ruling, the Bar Council hardly appears to have shifted its attitude. Its president Guy Arendt told the *Tageblatt* on Thursday that his association was far from happy with the ruling. "But we have no other choice than to accept the ruling," he told Lucien Montebusco. Arendt dismissed claims that the Council was seeking to protect its Luxembourg identity and said that around

half of its members were, in fact, non-Luxembourgers. He also told the *Tageblatt* that he was astonished that Wilson had refused to take the language test. "Ninety-five percent of those people who take the test pass it," he said.

Meanwhile, the populist ADR party reacted to the decision by calling for Luxembourgish to be the official spoken language in court. The party argues that in other EU countries, the native tongue is used in court and that interpreters are used if a

lawyer, defendant or plaintiff cannot speak the language.

Luxembourg had originally, and unsuccessfully, challenged the directive in the European Court of Justice. Four years after the directive was issued, Luxembourg transcribed it into law in December 2002. But despite warnings from the Council of State that the new legislation probably infringed EU law, the European Declaration of Human Rights and the Luxembourg Constitution, the government pushed through a proviso in the law

that specified that lawyers would have to "master" French, German and Luxembourgish. Applicants would have to sit a test, which would be judged by a panel of 15 local lawyers.

Wilson has been resident in the Grand Duchy since 1994, during which time he carved himself a niche in advising on international, EU and English and Welsh law, and formed a partnership with Luxembourg lawyer Guy Ludovissy.

Benjamin arrived to work at Ludovissy and Wilson, almost by chance, four years ago. She had studied law at Cambridge, after initially choosing to study modern languages, and then spent a year at the College of Law in London before training to be a solicitor with Eversheds law firm in London for two years.

Upon her arrival in Luxembourg in September 2002, the Law Society of England & Wales had informed her that she must register in Luxembourg as a foreign lawyer. "Little did I know that I would be informed it was a criminal offence to practice my profession as a solicitor and that I would spend the next few years disputing the case in the Luxembourg courts and that the question would be referred to the European Court of Justice, a place which in my mind was reserved for university text books," Benjamin said earlier this week. Wilson, meanwhile, had originally asked that



Ludovissy should be able to sit in on the language test process, but the judging panel refused his request. So, Wilson refused to take the test and subsequently challenged the law, a decision that was finally vindicated last week.

### Fundamental right to practise

"The decision of the Court...marks the penultimate step in the long drawn out process under which I, and my colleague Ms Louise Benjamin, an English solicitor, have had to fight to uphold our fundamental right to exercise our profession as lawyers," Wilson said in a statement last week.

Wilson said he had been disappointed with the attitude of both the Bar Council and the Luxembourg government. "It is difficult to escape the thought that, within a country that is usually one of the most European, and has prospered on the back of migrants from all corners of the Union, certain establishment figures within the Bar have sought to protect their own very lucrative legal practices...from the slightest competition," Wilson said. His view of the Bar Council's

motives are echoed by English Q.C Christopher Vajda, who, alongside Valentina Sloane, represented Wilson at the European Court of Justice. Vajda, who has been counsel in around 100 cases at the court, says that he had been pretty confident of winning the case. "The language requirement was plainly a (thinly) disguised restriction to keep other EU lawyers out of Luxembourg and the method of appeal was designed to prevent the matter coming to an independent court," he told 352 this week.

Vajda says the Wilson case has set a precedent for other professions, as well as for lawyers. "It also means that for professions where there is not a specific Directive, the burden will be on a State seeking to justify a language requirement and it will need to show why such a requirement is needed for consumer protection purposes and whether such a requirement is proportionate to any consumer protection objective," he said.

### Praise for two local lawyers

As well as thanking Vajda and Sloane, both from

Monckton Chambers in Gray's Inn, London, Wilson was full of praise for the now deceased local lawyer Georges Margue, who first advised him in the conflict some 13 years ago, and to his replacement Lydie Lorang.

He also paid tribute to Ludovissy and other members of the Luxembourg Bar who had encouraged him and Benjamin, and who recognised that a free Europe requires a free legal profession, accessible to all.

Benjamin, who ironically is now starting to learn Luxembourgish, says she has heard from several sources that the case is a hot topic of discussion, not only amongst Luxembourg lawyers but also within the Luxembourg community in general. Yet, apart from one former member of the Luxembourg Bar who stopped her in the street to congratulate her, Benjamin has received almost no feedback about the ECJ ruling. "My character being someone who strongly loves to justify and explain herself, I find it rather unnerving to be spoken about, often incorrectly, and to not be able to counter respond. In

particular I wish to express that we are simply upholding a law that was agreed in 1998 and that we are not imposing any opinion on the rights and wrongs of that European law."

She says that, naturally, she would rather have simply registered herself in 2002 as an English solicitor working in Luxembourg and quietly continued with life. "But it is also better to be talked about than ignored, and I have gained significant experience from every stage and am absolutely delighted by the ECJ ruling!"

Wilson, too, is pleased with the result and sees the ruling as an indicator of how the European Union should be acting. "In a community of dozens of languages, both official and unofficial, one must choose: either focus on the difficulties and kill the spirit of community, or work together to communicate and overcome. To see the opportunities and not just the problems. Luxembourg is usually so good at seizing these opportunities, and it is good to see the European Court going in the same direction."

