

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
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EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



ÞOS BENDRIJŪ TEISINGUMO TEISMAS  
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPELAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTIEV  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Cases C-506/04 and C-193/05

*Graham J. Wilson v Ordre des avocats du barreau du Luxembourg  
Commission of the European Communities v Grand Duchy of Luxembourg*

**THE PROVISIONS OF LUXEMBOURG LAW RELATING TO LINGUISTIC  
KNOWLEDGE WHICH EUROPEAN LAWYERS MUST POSSESS IN ORDER TO  
BE REGISTERED WITH A BAR ARE CONTRARY TO COMMUNITY LAW**

*Every lawyer has the right to practise on a permanent basis in any Member State under his home-country professional title without a prior test of his language skills*

In order to practise the profession of lawyer in Luxembourg, Luxembourg law lays down a condition that a lawyer must 'be proficient in the language of statutory provisions as well as the administrative and court languages', and requires a prior test of that knowledge.

Mr Graham Wilson, a UK national, is a barrister. He is a member of the Bar of England and Wales and has practised the profession of lawyer in Luxembourg since 1994.

In 2003, Mr Wilson refused to attend an oral hearing with the Bar Council in order to assess his linguistic knowledge. As a consequence, the Bar Council refused to register him on the register of lawyers practising under their home-country professional title.

Mr Wilson challenged that decision by bringing an action for annulment before the Higher Administrative Court, which asked the Court of Justice of the European Communities whether the directive on the practice of the profession of lawyer<sup>1</sup> allows the host Member State to make the right of a lawyer to practise his profession on a permanent basis in that Member State under his home-country professional title subject to a test of his proficiency in the languages of that Member State.

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<sup>1</sup> 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 177, p. 36-43)

The Court states that the directive aims to facilitate the exercise of the fundamental freedom of establishment for lawyers, and **that it precludes a prior test of linguistic knowledge**. Only a certificate attesting to registration with the competent authority of the home Member State is necessary in order to be registered with a Bar in the host Member State. To compensate for the exclusion of this prior testing, rules of professional conduct exist to ensure the protection of consumers and the proper administration of justice. Therefore, subject to disciplinary sanctions, a European lawyer must respect those rules, both the rules of the home Member State and those of the host Member State. Among those obligations is the duty of a lawyer not to handle cases which require linguistic knowledge that he does not possess.

Furthermore, according to the directive, a European lawyer who wishes to join the profession of the host Member State must show that he has effectively and regularly pursued an activity for a period of at least three years in the law of that Member State.

**The Court concludes, therefore, that the directive precludes a national law which makes registration of a European lawyer with the Bar of the host Member State subject to a language test.**

In this case, the Court also explains its case-law on **the definition of a court or tribunal**. It considers that, in the event of a refusal to register with the Bar of the host Member State, a right of appeal before disciplinary tribunals composed exclusively or predominantly of local lawyers is not the remedy before a court or tribunal that the directive requires Member States to provide for in such cases.

In parallel, the Commission also brought an action for failure to fulfil obligations against Luxembourg, taking the view that **three national measures are contrary to the directive**:

*Registration on the Bar Register following an oral test to assess linguistic knowledge*

The Luxembourg Government relies on the proper administration of justice to justify the existence of that provision, but the Court observes, as in Mr Wilson's case, that the directive does not provide for any condition other than that the lawyer must produce a certificate attesting to registration in the home Member State, and **concludes that the Luxembourg provision which makes registration of a European lawyer with the competent national authority subject to a prior test of linguistic knowledge is contrary to the directive**.

*The prohibition on European lawyers accepting service on behalf of companies in Luxembourg*

The Court notes the principle that European lawyers are entitled to pursue the same professional activities as lawyers practising under the professional title of the host Member State, subject to the exceptions provided for by the directive. The activity of accepting service on behalf of companies is not included in those exceptions. **Member States are not authorised to provide in their national law for other exceptions to that principle**.

*The obligation to produce each year a certificate from the home Member State*

The Court observes that that obligation is an **unjustified administrative burden** which is contrary to the directive, since the latter already enshrines a principle of mutual assistance, according to which the competent authority of the home Member State must notify the

competent authority of the host Member State when disciplinary proceedings are initiated against a European lawyer.

**On those grounds the Court declares that Luxembourg has failed to fulfil its Community obligations.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR, CS, DE, EN, HU, IT, NL, PL, SK, SL*

*The full text of the judgments may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-506/04> and*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-193/05>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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