JUDGMENT OF THE COURT (Grand Chamber)

19 September 2006 *

In Case C-506/04,

REFERENCE for a preliminary ruling under Article 234 EC by the Cour administrative (Luxembourg), made by decision of 7 December 2004, received at the Court on 9 December 2004, in the proceedings

Graham J. Wilson

v

Ordre des avocats du barreau de Luxembourg,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, K. Lenaerts (Rapporteur), E. Juhász, E. Levits, A. Ó Caoimh and L. Bay Larsen, Judges,

* Language of the case: French.

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2006,

after considering the observations submitted on behalf of:

— Mr Wilson, by L. Lorang, avocat, C. Vajda QC, and V. Sloane, Barrister,

— the Ordre des avocats du barreau de Luxembourg, by C. Ossola and C. Kaufhold, avocats,

— the Luxembourg Government, by S. Schreiner, acting as Agent, and L. Dupong, avocat,

— the French Government, by C. Bergeot-Nunes and G. de Bergues, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, and A. Cingolo, avvocato dello Stato,

— the United Kingdom Government, by R. Caudwell, acting as Agent, and M. Demetriou, Barrister,

— the Commission of the European Communities, by A. Bordes and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation 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 reference was made in the course of proceedings arising from the refusal of the Conseil de l'ordre des avocats du barreau de Luxembourg (Luxembourg Bar Council) ('the Bar Council') to register Mr Wilson, a British national, in the Bar Register of the Luxembourg Bar Association.

Legal background

Directive 98/5

3 The first paragraph of Article 2 of Directive 98/5 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.'

4 Article 3 of Directive 98/5, entitled 'Registration with the competent authority', provides:

'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.

...'

5 Article 5 of Directive 98/5, entitled 'Area of activity', states:

'1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and in so far as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an "avoué" practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.'

6 Article 9 of Directive 98/5, entitled 'Statement of reasons and remedies', provides:

'Decisions not to effect the registration referred to in Article 3 or to cancel such registration and decisions imposing disciplinary measures shall state the reasons on which they are based.

A remedy shall be available against such decisions before a court or tribunal in accordance with the provisions of domestic law.'

7 Article 10 of Directive 98/5, entitled 'Like treatment as a lawyer of the host Member State', contains the following provisions:

'1. 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)] in order to be admitted to the profession of lawyer in the host Member State. "Effective and regular pursuit" means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

...

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48 ... under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

...'

National law

8 Article 5 of the Law of 10 August 1991 on the profession of lawyer (*Mémorial* A 1991, p. 1110) ('the Law of 10 August 1991') provides:

'No one may practise as a lawyer if he is not registered in the register of a Bar Association established in the Grand Duchy of Luxembourg.'

9 Article 6 of the Law of 10 August 1991 provides as follows:

'1. In order to be registered on the Bar Register a person must:

(a) satisfy the requirement of good character;

(b) prove that he fulfils the requirements for admission to a traineeship.

By way of exception, the Bar Council may exempt applicants who have completed their professional training in their home State and who can prove that they have practised the profession for at least five years from certain requirements for admission to a traineeship.

(c) be of Luxembourg nationality or a national of a Member State of the European Communities. An applicant who is a national of a State which is not a Member of the European Community may be exempted by the Bar Council from this requirement after it has consulted the Minister for Justice and has been provided with proof of mutuality on the part of the State in question. The same applies for applicants who have the status of political refugee and who are granted asylum in the Grand Duchy of Luxembourg.

2. Before being registered on the Bar Register, an applicant, on presentation by the President of the Bar Council or his representative, shall swear an oath before the Cour de cassation (Court of Cassation) in the following terms: "I swear loyalty to the Grand Duke, obedience to the Constitution and the laws of the State; I swear to respect the authority of the courts; I swear to refrain from giving advice in relation to or defending any cause that I do not believe on my soul and conscience to be just".'

10 The conditions for registration were amended by Article 14 of the Law of 13 November 2002 transposing into Luxembourg law 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, amending (1) the amended Law of 10 August 1991 on the profession of lawyer; (2) the Law of 31 May 1999 on authorising the acceptance of service on behalf of companies (*Mémorial* A 2002, p. 3202) ('the Law of 13 November 2002').

11 Article 14 added to Article 6(1) of the Law of 10 August 1991 inter alia point (d), which lays down the following condition for registration:

'be proficient in the language of statutory provisions as well as the administrative and court languages as provided for by the Law of 24 February 1984 on the language regime'.

12 The language of statutory provisions is governed by Article 2 of the Law of 24 February 1984 on the language regime (*Mémorial* A 1984, p. 196) in the following terms:

'Statutes and their implementing provisions shall be in French. Where statutes and regulatory acts are accompanied by a translation, only the French text is authentic.

If regulations not referred to in the preceding paragraph are laid down by an organ of the State, by communes or by public bodies in a language other than French, only the text in the language used by that body is authentic.

This article does not derogate from the provisions applicable to international agreements.'

13 The administrative and court languages are governed by Article 3 of the Law of 24 February 1984 on the language regime as follows:

'In administrative, contentious or non-contentious proceedings and judicial matters, the French, German or Luxembourg languages may be used, without prejudice to special provisions on certain matters.'

14 In accordance with Article 3(1) of the Law of 13 November 2002, a lawyer who has obtained his qualification in a Member State other than the Grand Duchy of Luxembourg (a 'European lawyer') must be registered with one of the Bar Associations of that Member State in order to practise there under his home-country professional title.

15 Article 3(2) of that law provides:

'The Bar Council of the Grand Duchy of Luxembourg, when considering a European lawyer's application to practise the profession of lawyer under his home-country professional title, shall register him in the Bar Register of the Bar Association following a hearing enabling the Bar Council to verify whether the European lawyer is proficient in at least the languages specified in Article 6(1)(d) of the Law of 10 August 1991, and upon presentation of the documents specified in Article

6(1)(a), (c), first sentence, and (d) of the Law of 10 August 1991, and the certificate of registration of the European lawyer in question with the competent authority of his home Member State. ...'

16 According to Article 3(3) of the Law of 13 November 2002, decisions refusing registration, referred to in Article 3(2), are to state the reasons on which they are based, must be notified to the lawyer concerned, and 'may be challenged on the conditions and subject to the rules laid down in Article 26(7) et seq. of the Law of 10 August 1991'.

17 Article 26(7) of the Law of 10 August 1991 provides, inter alia where registration in the Bar Register of one of the Bar Associations is refused, that the person concerned may bring the matter before the Conseil disciplinaire et administratif (Disciplinary and Administrative Committee).

18 The composition of that body is governed by Article 24 of the Law of 10 August 1991, as follows:

'(1) By this Law, there is constituted a Disciplinary and Administrative Committee consisting of five lawyers registered in List I of the Bar Register, of whom four shall be elected by the Luxembourg Bar Association in general meeting by simple majority, and of whom one shall be elected by the Diekirch Bar

Association in general meeting by simple majority. The Luxembourg Bar Association in general meeting shall elect four substitutes and the Diekirch Bar Association in general meeting shall elect one substitute. Where a member is prevented from acting, a substitute appointed by the Bar Association to which he belongs shall act in his place, according to order of seniority; and if the substitutes elected by his own Bar Association are unable to act, the member shall be represented by a substitute elected by the other Bar Association.

(2) The members shall serve for a term of two years from the 15 September following their election. If the office of a member or of a substitute falls vacant, the Disciplinary and Administrative Committee shall appoint a replacement. The term of office of a replacement member and of a replacement representative shall end on the day on which the term of office of the elected member or substitute he replaces would have ended. The members of the Disciplinary and Administrative Committee may be re-elected.

(3) The Disciplinary and Administrative Committee shall elect a chairman and a vice-chairman. Where the chairman and vice-chairman are unable to act, the longest serving member shall preside. The most recently appointed member of the Committee shall act as secretary.

(4) Members of the Disciplinary and Administrative Committee shall be Luxembourg nationals who have been registered in List I of the Bar Register for at least five years, and shall not be members of the Bar Council.

(5) If it is impossible for the Disciplinary and Administrative Committee to be constituted according to the foregoing provisions, its members shall be appointed by the Council of the Bar Association to which the members to be replaced belong.'

19 Article 28(1) of the Law of 10 August 1991 provides for the possibility of appeal against the decisions of the Disciplinary and Administrative Committee.

20 In the version prior to the Law of 13 November 2002, Article 28(2) provided:

'For that purpose there shall be appointed a Conseil disciplinaire et administratif d'appel (Disciplinary and Administrative Appeals Committee), which shall consist of two judges of the Cour d'appel (Court of Appeal) and three lawyers registered in List I of the Bar Register sitting as assessors.

The members of the Committee who are judges, their substitutes and the clerk appointed to the Committee shall be appointed by Grand-Ducal Order on a proposal by the Cour supérieure de justice (Supreme Civil Court) for a term of two years. Their remuneration shall be fixed by Grand-Ducal Regulation.

The assessor and his substitute shall be appointed for a term of two years by Grand-Ducal Order. They shall be appointed from a list of three lawyers who have been registered for at least five years in List I of the Bar Register, which list shall be submitted by each Bar Association Council for each vacancy.

Members of a Bar Association or Bar Council shall not be eligible for appointment as assessor.

The Disciplinary and Administrative Appeals Committee shall sit in the offices of the Cour supérieure de justice, which shall also serve as Registry.'

21 Article 28(2) of the Law of 10 August 1991, as amended by Article 14 of the Law of 13 November 2002, now provides:

'For that purpose there shall be appointed a Disciplinary and Administrative Appeals Committee, which shall consist of two judges of the Cour d'appel and three lawyers registered in List I of the Bar Register sitting as assessors.

...

The assessors and their substitutes shall be appointed for a term of two years by Grand-Ducal Order. They shall be appointed from a list of five lawyers, who have been registered for at least five years in List I of the Bar Register, to be submitted by each Bar Association Council for each vacancy.

...

The longest-serving judge shall preside in the Disciplinary and Administrative Appeals Committee.'

22 Under Article 8(3) of the Law of 10 August 1991, as amended by Article 14(V) of the Law of 13 November 2002, the Bar Register of each Bar Association consists of four lists, namely:

'1. List I: lawyers who satisfy the requirements of Articles 5 and 6 and who have passed the examination at the end of traineeship provided for by law;

2. List II: lawyers who satisfy the requirements of Articles 5 and 6;

3. List III: non-practising lawyers;

4. List IV: lawyers who practise under their home-country professional titles.'

The main proceedings and the questions referred for a preliminary ruling

23 Mr Wilson, a UK national, is a barrister. He has been a member of the Bar of England and Wales since 1975. He has practised as a lawyer in Luxembourg since 1994.

24 On 29 April 2003 Mr Wilson was requested by the Bar Council to attend a hearing as provided for by Article 3(2) of the Law of 13 November 2002.

25 On 7 May 2003 Mr Wilson attended the hearing accompanied by a Luxembourg lawyer, but the Bar Council refused to allow the latter to be present.

26 By registered letter of 14 May 2003, the Bar Council notified Mr Wilson of its decision to refuse to register him in List IV of lawyers practising under their home-country professional title in the Bar Register. That decision contained the following statement of reasons:

'Although the Bar Council informed you that the assistance of a lawyer was not permissible, as it is not provided for by law, you refused to attend the hearing without the assistance of Maître ... . The Bar Council was therefore not in a position to ascertain whether you are proficient in languages as provided for by Article 6(1) of the Law of 10 August 1991 ...'

27 In that letter, the Bar Council informed Mr Wilson that, 'in accordance with Article 26(7) of the Law of 10 August 1991, this decision may be subject to an appeal, by application to the Conseil disciplinaire et administratif (P.O. Box 575, L-1025 Luxembourg) within 40 days of the date of despatch of this letter'.

28 By application of 28 July 2003, Mr Wilson brought an action for the annulment of that refusal before the Tribunal Administratif de Luxembourg (Administrative Court, Luxembourg).

29 By judgment of 13 May 2004 that court held that it had no jurisdiction to hear the case.

30 By application received at the Registry of the Cour Adminsitratif (Higher Administrative Court) on 22 June 2004, Mr Wilson appealed against that judgment.

31 The referring court explains that the issue of whether the appeal procedure introduced by Luxembourg law complies with Article 9 of Directive 98/5 is directly related to the issue of the jurisdiction of the administrative courts to hear the dispute in the main proceedings. On the substance, the referring court is unsure whether the Luxembourg provisions establishing a language test for European lawyers who wish to practise in Luxembourg is compatible with Community law.

32 In those circumstances the Cour administratif decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should Article 9 of Directive 98/5 ... be interpreted as precluding appeal proceedings as provided for under the Law of 10 August 1991, as amended by the Law of 13 November 2002?

(2) More particularly, do appeal bodies such as the Conseil disciplinaire et administratif and the Conseil disciplinaire et administratif d'appel constitute "a remedy before a court or tribunal in accordance with domestic law" within the meaning of Article 9 of Directive 98/5 and should [that article] be interpreted as precluding a remedy which requires referral to one or more bodies of this nature before it becomes possible to refer a matter on a question of law to a "court or tribunal" within the meaning of [that article]?

(3) Are the competent authorities of a Member State authorised to make the right of a lawyer of [another] Member State to practise on a permanent basis the profession of lawyer under his home-country professional title in the areas of activity specified in Article 5 of Directive 98/5 subject to a requirement of proficiency in the languages of [the first] Member State?

(4) In particular, may the competent authorities make the right to practise the profession subject to the condition that the lawyer sit an oral examination in all (or more than one) of the three main languages of the host Member State for the purpose of allowing the competent authorities to verify whether the lawyer is proficient in the three languages, and if so, what procedural guarantees, if any, are required?'

The first and second questions

The jurisdiction of the Court to answer those questions and their admissibility

33 The Luxembourg Bar Association, supported by the Luxembourg Government, argues that the first two questions are outside the jurisdiction of the Court. By those questions, the referring court seeks an interpretation of Article 9 of Directive 98/5 in the light of national provisions. The Court does not have jurisdiction either to review the compatibility of national provisions with Community law or to interpret such provisions.

34 It is true that it is not for the Court to rule on the compatibility of national rules with provisions of Community law in proceedings brought under Article 234 EC (see, in particular, Case C-130/93 *Lamaire* [1994] ECR I-3215, paragraph 10). Furthermore, under the system of judicial cooperation established by that provision the interpretation of national rules is a matter for the national courts and not the Court of Justice (see, in particular, Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 7).

35 On the other hand, the Court does have jurisdiction to supply the national court with all the guidance as to the interpretation of Community law necessary to enable that court to rule on the compatibility of the national rules with the provisions of Community law (see, in particular, *Lamaire*, paragraph 10).

36 In this case, the first two questions contain a request for an interpretation of Article 9 of Directive 98/5 for the purpose of enabling the referring court to determine the compatibility with that article of the appeal procedure established by Luxembourg law. Consequently, those questions are within the jurisdiction of the Court.

37 The Luxembourg Bar Association also claims that the order for reference does not contain any indication as to the nature, composition and mode of functioning of the review bodies at issue in the main proceedings, which is liable to prevent the Court from providing a useful answer to the national court as regards the first two questions.

38 In that regard, it must be observed that, according to settled case-law, the need to provide an interpretation of Community law which will be of use to the national court makes it necessary for the national court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based (see, inter alia, Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 39, and Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraph 30).

39 The information provided in orders for reference must not only enable the Court to reply usefully but must also give the Governments of the Member States and other interested parties the opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice. It is the Court's duty to ensure that that

opportunity is safeguarded, bearing in mind that under that provision only the orders for reference are notified to the interested parties (*Albany*, paragraph 40, and Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 30).

40 In this case, it is clear in the first place from the observations submitted by the parties in the main proceedings, the Governments of the Member States and the Commission of the European Communities that they have been able to effectively put their arguments on the two questions.

41 Secondly, the Court considers that the information contained in the order for reference and the observations submitted to it is sufficient to enable it to reply usefully to the questions referred.

42 Consequently, the Court may answer the first two questions.

The substance

43 By its first two questions, which it is appropriate to deal with together, the referring court asks the Court essentially to interpret the concept of remedy before a court or tribunal in accordance with the provisions of domestic law for the purposes of Article 9 of Directive 98/5 in the case of an appeal procedure such as that provided for by Luxembourg law.

44 In that regard, it must be recalled that Article 9 of Directive 98/5 provides that a remedy must be available before a court or tribunal in accordance with the provisions of domestic law against decisions of the competent authority of the host Member State which refuses to register a lawyer who wishes to practise there under his home-country professional title.

45 It follows from that provision that Member States must take measures which are sufficiently effective to achieve the aim of Directive 98/5 and that they must ensure that the rights thus conferred may be effectively relied upon before the national courts by the persons concerned (see, by way of analogy, Case 222/84 *Johnston* [1986] ECR 1651, paragraph 17).

46 As the French Government and the Commission have pointed out, the judicial review required by that provision reflects a general principle of Community law stemming from the constitutional traditions common to the Member States and enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights (see, inter alia, *Johnston*, paragraph 18; Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 14; Case C-424/99 *Commission* v *Austria* [2001] ECR I-9285, paragraph 45; and Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 101).

47 In order to ensure effective judicial protection of the rights laid down in Directive 98/5 the body called upon to hear appeals against decisions refusing registration, referred to in Article 3 of that directive, must be a court or tribunal as defined by Community law.

48 That definition has been laid down in the case-law of the Court relating to the definition of a national court or tribunal within the meaning of Article 234 EC, setting out a certain number of criteria that must be satisfied by the body concerned, 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 (see, to that effect, Case 61/65 *Vaassen-Göbbels* [1966] ECR 261 and Case C-54/96 *Dorsch Consult* [1997] ECR I-4961, paragraph 23) and its independence and impartiality (see, to that effect, Case 14/86 *Pretore di Salò* v *Persons Unknown* [1987] ECR 2545, paragraph 7; Case 338/85 *Pardini* [1988] ECR 2041, paragraph 9; and Case C-17/00 *De Coster* [2001] ECR I-9445, paragraph 17).

49 The concept of independence, which is inherent in the task of adjudication, involves primarily an authority acting as a third party in relation to the authority which adopted the contested decision (see, to that effect, inter alia Case C-24/92 *Corbiau* [1993] ECR I-1277, paragraph 15, and Case C-516/99 *Schmid* [2002] ECR I-4573, paragraph 36).

50 The concept has two other aspects.

51 The first aspect, which is external, 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, to that effect, Case C-103/97 *Köllensperger and Atzwanger* [1999] ECR I-551, paragraph 21, and Case C-407/98 *Abrahamsson and Anderson* [2000] ECR I-5539, paragraph 36; see also, to the same effect, Eur. Court HR *Campbell and Fell* v. *United Kingdom*, judgment of 28 June 1984, Series A No 80, § 78). That essential freedom from such external factors requires certain guarantees sufficient to protect the person of those who have the task of adjudicating in a dispute, such as guarantees against removal from office (Joined Cases C-9/97 and C-118/97 *Jokela and Pitkäranta* [1998] ECR I-6267, paragraph 20).

52 The second aspect, which is internal, is linked to impartiality and seeks to ensure a level playing field for the parties to the proceedings and their respective interests

with regard to the subject-matter of those proceedings. That aspect requires objectivity (see, to that effect, *Abrahamsson and Anderson*, paragraph 32) and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law.

53 Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for abstention, rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (see, in that regard, *Dorsch Consult*, paragraph 36; *Köllensperger and Atzwanger*, paragraphs 20 to 23; and *De Coster*, paragraphs 18 to 21; see also, to that effect, Eur Court *HR De Cubber* v. *Belgium*, judgment of 26 October 1984, Series A No 86, § 24).

54 In this case, the composition of the Disciplinary and Administrative Committee as laid down by Article 24 of the Law of 10 August 1991 is characterised by the exclusive presence of lawyers of Luxembourg nationality, registered in List I of the Bar Register — namely the list of lawyers practising under the Luxembourg professional title and who have passed the examination at the end of the traineeship — and elected by the general assemblies of the Bar Associations of Luxembourg and Diekirch.

55 As regards the Disciplinary and Administrative Appeals Committee, the amendment made to Article 28(2) of the Law of 10 August 1991 by Article 14 of the Law of 13 November 2002 confers overriding influence on the assessors, who must be registered on the same list and presented by the Bar Councils of each of the Bar Associations referred to in the preceding paragraph of this judgment, as compared with the professional magistrates.

56 As the Advocate General observed in point 47 of her Opinion, the Bar Council, whose members, in accordance with Article 16 of the Law of 10 August 1991, are

lawyers registered in List I of the Bar Register, thus has its decisions refusing registration of a European lawyer reviewed at first instance by a body composed exclusively of lawyers registered on the same list and on appeal by a body composed for the most part of such lawyers.

57 In those circumstances, a European lawyer whose registration on List IV of the Bar Register has been refused by the Bar Council has legitimate grounds for concern that either all or the majority, as the case may be, of the members of those bodies have a common interest contrary to his own, that is, to confirm a decision to remove from the market a competitor who has obtained his professional qualification in another Member State, and for suspecting that the balance of interests concerned would be upset (see, to that effect, Eur. Court HR *Langborger* v. *Sweden*, judgment of 22 June 1989, Series A No 155, § 35).

58 The rules governing the composition of bodies such as those at issue in the main proceedings do not appear, therefore, to be of such a kind as to provide a sufficient guarantee of impartiality.

59 Contrary to the submissions of the Luxembourg Bar Council, the concerns relating to those rules of composition cannot be assuaged by the possibility of appeal provided for in Article 29(1) of the Law of 10 August 1991 against the decisions of the Disciplinary and Administrative Appeals Committee.

60 Article 9 of Directive 98/5, although it does not preclude appeal proceedings being brought before a body which is not a court or tribunal, does not provide that a legal remedy may be open to the person concerned only after all other remedies have been exhausted. In any event, where an appeal before a non-judicial body is provided for by national law, Article 9 requires actual access within a reasonable period (see,

by way of analogy, Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraphs 180 to 205, 223 and 234) to a court or tribunal as defined by Community law, which is competent to give a ruling on both fact and law.

61 Apart from the question whether proceedings before two non-judicial bodies may be reconciled with the requirement of a reasonable period, the jurisdiction of the Cour de cassation (Court of Cassation) of the Grand Duchy of Luxembourg is limited to questions of law, so that it does not have full jurisdiction (see, to that effect, Eur. Court HR *Incal* v *Turkey* judgment of 9 June 1998, Reports of judgments and decisions 1998-IV, p. 1547, § 72).

62 In the light of the foregoing, the answer to the first two questions must be that Article 9 of Directive 98/5 must be interpreted as meaning that it precludes an appeal procedure in which the decision refusing registration, referred to in Article 3 of that directive, must be challenged at first instance before a body composed exclusively of lawyers practising under the professional title of the host Member State and on appeal before a body composed for the most part of such lawyers, where the appeal before the supreme court of that Member State permits judicial review of the law only and not the facts.

The third and fourth questions

63 By its third and fourth questions, which it is appropriate to examine together, the referring court asks whether and, if appropriate, in what circumstances Community

law allows a host Member State to make the right of a lawyer to practise 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.

64 In that regard, as is clear from recital (6) in the preamble to Directive 98/5, by that directive, the Community legislature sought 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 free movement (see also, to that effect, Case C-168/98 *Luxembourg* v *Parliament and Council* [2000] ECR I-9131, paragraph 64).

65 In that context, Article 3 of Directive 98/5 provides that a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification must register with the competent authority in that State, which must register him 'upon presentation of a certificate attesting to his registration with the competent authority in the home Member State'.

66 Given the objective of Directive 98/5, set out in paragraph 64 of this judgment, it must be held, as the United Kingdom Government and the Commission rightly submitted, that in Article 3 of that directive the Community legislature carried out a complete harmonisation of the prior conditions for the exercise of the right it confers.

67 It is thus apparent that 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.

68 That analysis is confirmed by the Explanatory Memorandum on the Proposal for a European Parliament and Council Directive 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 (COM(94) 572 final), in which, in the comments on Article 3, it is stated that '[r]egistration [with the competent authority of the host Member State] is an automatic entitlement where the applicant furnishes proof of his registration with the competent authority in his home Member State'.

69 As the Court has already noted, the Community legislature, with a view to making it easier for a particular class of migrant lawyers to exercise the fundamental freedom of establishment, did not opt for a system of prior testing of the knowledge of the persons concerned (see *Luxembourg* v *Parliament and Council*, paragraph 43).

70 Thus Directive 98/5 does not allow the registration of a European lawyer with the competent authority of the host Member State to be conditional on a hearing designed to enable that authority to determine whether the person concerned is proficient in the languages of that Member State.

71 As Mr Wilson, the United Kingdom Government and the Commission submitted, the exclusion of a system of prior testing of the knowledge, particularly of languages, for European lawyers is, however, accompanied in Directive 98/5 by a set of rules intended to ensure, to a level acceptable in the Community, the protection of consumers and the proper administration of justice (see *Luxembourg* v *Parliament and Council*, paragraphs 32 and 33).

72 Thus, the purpose of the obligation imposed by Article 4 of Directive 98/5 on European lawyers to practise under their home-country professional title in the host

Member State is, according to recital (9) in the preamble to that directive, to make clear the distinction between such lawyers and lawyers from the host Member State, so that clients are aware that the professional to whom they entrust the defence of their interests has not obtained his qualification in that Member State (see, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 34) and does not necessarily have the knowledge, in particular of languages, which is adequate to deal with the case.

73 As regards activities relating to representation and defence of a client in legal proceedings, Member States are permitted, in accordance with Article 5(3) of Directive 98/5, to require European lawyers practising under their home-country professional title to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it. That option compensates for any lack of proficiency on the part of the European lawyer in the court languages of the host Member State.

74 Under Articles 6 and 7 of Directive 98/5, a European lawyer must comply not only with the rules of professional conduct applicable in his home Member State but also with those of the host Member State, failing which he will incur disciplinary sanctions and exposure to professional liability (see *Luxembourg* v *Parliament and Council*, paragraphs 36 to 41). One of the rules of professional conduct applicable to lawyers is an obligation, like that provided for in the Code of Conduct adopted by the Council of the Bars and Law Societies of the European Union (CCBE), breach of which may lead to disciplinary sanctions, not to handle matters which the professionals concerned know or ought to know they are not competent to handle, for instance owing to lack of linguistic knowledge (see, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 42). Communication with clients, the administrative authorities and the professional bodies of the host Member State, like compliance with the rules of professional conduct laid down by the authorities of that Member State, requires a European lawyer to have sufficient linguistic knowledge or recourse to assistance where that knowledge is insufficient.

75 It is also important to point out, as did the Commission, that one of the objectives of Directive 98/5, according to recital (5) in the preamble, is, 'by enabling lawyers to practise under their home-country professional titles on a permanent basis in a host Member State, [to meet] the needs of consumers of legal services who, owing to the increasing trade flows resulting, in particular, from the internal market, seek advice when carrying out cross-border transactions in which international law, Community law and domestic laws often overlap'. Such international cases, like those to which the law of a Member State other than the host Member State is applicable, may not require a degree of knowledge of the languages of the latter Member State as high as that required to deal with matters in which the law of that Member State is applicable.

76 Finally, it must be observed that like treatment of European lawyers as lawyers of the host Member State, which Directive 98/5 is designed to facilitate, according to recital (14) in the preamble, requires, under Article 10, that the person concerned proves that he has effectively and regularly pursued for a period of at least three years an activity in the law of that State or, where the period is shorter, that he has other knowledge, training or professional experience relating to that law. Such a measure enables European lawyers wishing to integrate into the profession of the host Member State to become familiar with the language(s) of that Member State.

77 In light of the foregoing, the answer to Questions 3 and 4 must be that Article 3 of Directive 98/5 must be interpreted as meaning that the registration of a lawyer with the competent authority of a Member State other than the State where he obtained his qualification in order to practise there under his home-country professional title cannot be made subject to a prior examination of his proficiency in the languages of the host Member State.

Costs

78 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.

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

1. **Article 9 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 it precludes an appeal procedure in which the decision refusing registration, referred to in Article 3 of that directive, must be challenged at first instance before a body composed exclusively of lawyers practising under the professional title of the host Member State and on appeal before a body composed for the most part of such lawyers, where the appeal before the supreme court of that Member State permits judicial review of the law only and not the facts.**

2. **Article 3 of Directive 98/5 must be interpreted as meaning that the registration of a lawyer with the competent authority of a Member State other than the State where he obtained his qualification in order to practise there under his home-country professional title cannot be made subject to a prior examination of his proficiency in the languages of the host Member State.**

[Signatures]