

Euro Vision – the view from the European Circuit of the Bar’s 2017 Brussels conference

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As many will know, the European Circuit of the Bar provides a forum in which cross-border litigators and advocates can meet to exchange experience, good practice and to meet possible future colleagues for discussion of matters of common interest. Membership is drawn from the British Isles and Ireland as well as other European bars and includes members from many different areas of specialisation. One of the original focuses for its foundation was the diaspora of c. 1000 barristers with an address in Europe but outside the UK and today it is trying to focus on helping young practitioners to build international work into their practices. Since its foundation in 2001, it has always held an overseas event in conjunction with the local Bar of various European capitals (Berlin, Paris, Rome, Madrid etc) and it also holds speaker meetings such as the event in May 2017 which brought together European and UK constitutional specialists to discuss the

pros and cons of written constitutions based on practical experience of their operation.

This year, as summer leaned into autumn, the Circuit held its annual conference in Brussels in conjunction with the Brussels Bars - “*Euro Vision for litigators in Europe and beyond*”. It coincided with the referendum in Catalunya when passions were running high in Spain and hurricanes were storming across the Atlantic, but Brussels felt like an oasis of elegant, sophisticated, open, friendly calm.

As demonstrated by the unmistakable bling of a highly successful merchant class in the stunning architecture of La Grande Place, Brussels is a city long built on commerce, lawyering and orderliness. It was also evident everywhere in the structure of the city, that the industry of law had also given rise to a rich culture: fabulous architecture, art, music, luxury chocolate and world-beating moules-frites, (especially the chips, twice fried

a crispy perfection.....I digress). And yet, juxtaposed to the lively culture and laid back, open, purposefulness, there were hints of unsettlement in the wider world: lots of references to the displaced Congolese and their migrant African neighbours in the buskers on the streets and casual posters on spare walls; friendly, but very professional-looking, armed soldiers at strategic points, including doing the security checks at the Palais de Justice; and a very high police presence protecting the Synagogue de Bruxelles (dedicated as the Great Synagogue of Europe in 2008) during Friday night and Saturday prayers.

And so lawyers from England, Scotland, Ireland, France, Italy and Spain met with colleagues from the Flemish and French-speaking Brussels Bars, and had the privilege of hearing first hand from highly eminent members of the judiciary. Brussels has an amazing and flexible “butterfly” structure which allows for the two language branches of the Bar to share the same building and judges. Both the significance and pragmatism were not lost on the conference practitioner delegates who have, or aspire to have, cross-border practices.

Proceedings got off to a lively start on Thursday 29th September in the stunning but intimate reception rooms of the residence of the UK’s Permanent Representative to the EU on Rue Ducale, with a generous welcome from Katrina Williams (Deputy Permanent Representative) and from Chairman of the Bar, Andrew Langdon QC.

Friday morning started with tour of the massive Palais de Justice which was the biggest building in Europe at the time that it was built. One high point was sitting in on a hearing before a panel of three judges who happened to be an all-female bench. One party was 30 mins late for the hearing and it was fascinating to see the judicial ire which needed no translation from French. A second highlight was the marble meeting room dedicated to the Batonnier in the Second World War who refused to hand over names of Jewish advocates practising at the Brussels Bar and

who was subsequently assassinated by the Nazis. A third highlight was the well-used, wooden-panelled Bar Mess, a working cafe with tables, scribbling lawyers, scuffed furniture, proper coffee (served in real crockery), croissants, gentle gossip, a legal book stall and beer on draught! It was the antipathy of a skeleton service from a soulless outsider caterer skilled only in providing microwaved provisions.

Patrick A. Dillen (Stafhouder) opened the conference, emphasising that Brussels is an open, multi-lingual city where they intend to continue to encourage English-speaking lawyers to practise in their legal community, followed by Michel Forges (Vice-Batonnier) who congratulated the European Circuit for “this beautiful project”.

The importance of an independent judiciary was then considered at a time when we know that judges in certain European countries are facing real challenges and a number of Turkish judges have been dismissed or detained since events there in 2016. Sir Nicholas Forwood QC, chairing the session, pointed out that the judiciary is the “weakest” or most delicate part of interface between executive and legislature. Having modestly described herself to the conference as an “amuse bouche”, the Hon Lady Sarah Wolffe, (Justice to the Scottish Court of Session) then set out the challenge that the judiciary will face in attempting to interpret and apply European jurisprudence both pre- and post-Brexit were there to be inadequate guidance from parliament, with a risk that judges will again be denounced as “enemies of the people” if it appears that they are engaged in law-making as they attempt to navigate the legal voids created by Brexit. Judge Alfred Van Winsen (President of the Brussels Court of first instance Dutch Section) spoke of the importance of the courts and judges to have proper equipment and finances to pay for resources, without which justice is undermined. Judge Anthony Collins (Judge of the General Court, Court of Justice of the European Union) reminded us that the legitimacy of judicial power is that the exercise of judicial power is answerable to the people and that when constitutions are under pressure, constitutional values come under pressure.

Next there was a discussion of what EU law had given to the common law and the impact of common

law and lawyers on the EU. It was acknowledged that UK law had greatly benefitted from the EU, particularly in social and employment protection, but lawyers from the common law tradition were credited with having enriched European jurisprudence by bringing common law learning and procedure. There was also admiration from the European senior lawyers and judges of the contribution from Irish and British advocates and the benefits of oral advocacy including the rapid identification of pivotal legal points. It was agreed that this added an important extra dimension to written submissions and assisted in with the sifting and prioritisation of essential arguments. The advantages of the process of interaction between the bench and advocates was also explored. This session was chaired by David Barniville SC (past president of the Irish Bar) and the conference was extraordinarily lucky to hear presentations from Eleanor Sharpston (Advocate General at the Court of Justice of the European Union) and from Seamus Woulfe SC (Attorney General of Ireland) as well as their reactions to questions.

Later, amongst others, we heard from Alastair Sutton (Brick Court Chambers) who exudes energy and encyclopaedic knowledge of the evolution of European law and the key players within the European legal world, and from Isabelle Van Damme (Avocat, Van Bael & Bellis) about World Trade Organisation rules and remedies. Since the referendum, the WTO rules are mentioned in the news media in a vague and general way as the panacea to all of the UK’s post-Brexit challenges. So it was refreshing, if worrying, to have the verbally elegant and obviously expert Isabelle Van Damme give a calm and dispassionate overview of the WTO rules including what sounded like some very real disadvantages of the World Trade Organisation for the UK post-Brexit when the UK becomes a relatively small fish in a pond dominated by behemoths including the remaining 27 EU block and the USA. Ed McGovern picked up the theme of the difference in enforceability by individuals as between EU law and WTO rules and Alexander Cooke from the UK Government Legal Department chaired the session.

The main part of the conference took place in the Salle des Audiences Solennelles de la Cour d’Appel generously lent to the Brussels Bars

and the Circuit for the conference. The room is decorated by massive painted scenes of groups of fleshy individuals scantily clad, save for convenient modesty-saving fabric, depicted against rich outdoor settings. Being reminded of nakedness and the essential vulnerability of human beings, our co-dependency and innate connection with the physical environment was appropriate as the conference ended concentrating more on the legal rights of individual citizens and practice rules for lawyers, in a session on Forum Shopping in Tort and Family law and a session examining the practical challenges related to lawyers practising abroad. Paul McGarry SC (current Chairman of the Irish Bar) chaired Me Arnaud Gillard (Avocat and Belgian Family law practitioner) who spoke about issues in cross-border family disputes and Philip Mead (Barrister at 12 KBW) gave in impressively concise summary of European personal injury litigation. Jean-Louis Joris (Avocat Cleary Gottlieb Brussels) chaired Trevor Soames (Avocat au Barreau de Bruxelles, Solicitor-Advocate and Barrister), Jean Paul Hordies (Avocat, Alphalex Avocats) and Luc Vanheeswijck (Head of the Cabinet of Stafhouder) who spoke, inter alia, of the uncertainties created by Brexit for professional relationships with European legal colleagues and the extent to which UK lawyers might be able to continue to practise in the Courts abroad.

We ended the conference with a delicious meal sitting round three big tables in a private room at the Restaurant “Au Vieux St Martin” in the elegant Grand Sablon. It was relaxed, not remotely stuffy and a brilliant way to talk openly, making new friends and learning from the experience of colleagues in other jurisdictions. The conversation and wine flowed. And yet walking through the Place Poelaert past the Palais de Justice on the way to dinner and a fabulous evening ahead, I was reminded of sad sober times by the First World War memorial there in which the people of Britain thank the Belgian citizens: “*Hommage du peuple Britannique en souvenir des secours prodigés par les généreux citoyens Belges, a ses soldats blessés et prisonniers. Ce sont des hommes de charité et de miséricorde et les oeuvres de leur piété subsisteront à jamais*”.

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