

6th Annual Congress

“Individual Rights in Employment: The Charter of Fundamental Rights of the European Union & Article 13 of the Treaty”

Report – Big Aspirations, Small Steps

- **Introduction**

The 6th Annual Congress of the EALCJ was held in Dublin Castle from 11th to 13th October 2001. It was attended by 37 delegates from 13 countries. The aim of the Congress was to examine the impact of recent European legislation on equal opportunities on national courts and how these new provisions will be implemented in the future. The particular emphasis was on those aspects of discrimination which had not been the subject of European legislation in the past.

- **Article 13**

The first Session, presided over by Mary Faherty, President of EALCJ consisted of a presentation by Noel Dorr, the Irish representative on the negotiating group which prepared the treaty of Amsterdam, which added Article 13,

Article 13 of the European Treaty empowers the Commission to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Before the Treaty of Amsterdam there was already the provision in the treaty relating to equal pay for men and women and the provision preventing discrimination on the grounds of nationality. There was also the 1976 Directive banning discrimination on the grounds of sex.

The new factors in Article 13, therefore, were to allow for community legislation combating discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Noel Dorr, in an entertaining exposé, described the negotiations about what categories should be included and the nuances of such words as “combat discrimination” which replaced “prohibit discrimination” which was in the draft as well as the removal from the draft of “social origin” as a basis for discrimination.

The core subject of the Congress was the “Race Directive” adopted on 29th June 2000 to be implemented by July 2003. The implementation provisions require government to ensure that “management and labour to introduce the necessary measures by agreement”.

The other main Directive is the Employment Directive which establishes a general framework for combating discrimination in employment on grounds of religion or belief, disability, age or sexual orientation. This is to be transposed by Member States by December 2003, with an extension to December 2006 in relation to age and disability discrimination.

The other principal area of discussion in the Congress was the "Charter of Fundamental Rights of the European Union". This has the status of a "Solemn Proclamation" by all the European Institutions on 7 December 2000. It is, therefore, a political declaration rather than a part of the European Treaty.

In respect of discrimination, it contains a wider provision than Article 13 of the European Treaty. Article 21 of the Charter provides

"Any discrimination based on any ground, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability age or sexual orientation shall be prohibited.

Within the scope of application of the Treaty establishing the European Community and of the Treaty of European Union, and without prejudice to the special provisions of these treaties, any discrimination on grounds of nationality shall be prohibited".

One point emphasized by Mr. Dorr at the end of his talk was that the new rights extend to all persons lawfully within the Union and not just to citizens of the Union. This is an important point, for the most disadvantaged people within the European Union are those entitled to live there without gaining Citizenship.

3. Charter of Fundamental Rights of the European Union

The Second Session under the Presidency of Per Sørensen, Judge of the Danish Supreme Court and President of the Labour Court, was introduced by Professor Alan Neal, Convenor of EALCJ and reported by Jorma Saloheimo, Vice-president of the Labour Court of Finland.

In introducing the session Prof. Neal suggested that the European Court would not accept the Charter until it is incorporated into European Law. Until then it will be no more than a declaration of principles, similar to that in many European constitutions, but without a community-wide court to enforce it. There is already in existence the

European Convention of Human Rights, made by the Council of Europe (50 nations instead of 15) and the European Social Charter of 1961.

Specifically in relation to discrimination, there was also discussion about the wide range of discrimination grounds. Does the possibility of a claim of discrimination on, say, grounds of property or birth dilute the force of the prohibition of discrimination on the grounds of race or disability?

Although the focus of the Congress was on discrimination, there was discussion of article 30 which provides:-

"Every worker has the right to protection against unjustified dismissal, in accordance with community law and national laws and practices."

This is the proposed subject of our next Congress.

In his Report Jorma Saloheimo returned to the subject of enforcement. He pointed out that Article 51 states that "The provisions of this Charter are addressed to the institutions and bodies of the Union...and to the Member States only when they are implementing Union law." They do not, therefore, on the face of it give rise to rights which can be enforced between parties – i.e no horizontal effect"

4. The road to implementation of the equality package – the Irish Experience

This session, presided over by Tor Mehl, the President of the Labour Court of Norway, was introduced by Melanie Pine, the Director of Equality Investigation of the Republic of Ireland.

Ireland had responded to the Equality Package with a determined and innovative approach. The aim of the new body was to combine investigation and adjudication to try to move away from the rigidity of the court framework. The new body had been in operation for over a year. Over 60% of claims related to sex discrimination. Next was race discrimination (particularly relating to the attitude to travellers, who, though not romanes were treated as a separate ethnic group and then age discrimination, especially in relation to promotion and access to insurance. But there are also claims of discrimination on social origin (e.g. coming from inner city Dublin) and political opinion (a factor which is central to the Northern Ireland Fair Employment Tribunal, which is a much more formal body with much wider powers to order compensation)

As discovered in other countries, the creation of a forum for discrimination claims had demonstrated an untapped need. There is a direct correlation between the ease of access to a court or tribunal to resolve discrimination issues and the number of cases. This suggests that countries which have relied on the normal courts to deal with discrimination issues may be covering up injustices.

The key elements of this process are informality and keeping things in proportion. The compensation awarded is not high. There is a limit of £10,000 and many awards are much lower. This makes acceptance easier.

5. The Role of Labour Courts in implementing and enforcing anti-discrimination legislation.

This session was presided over by Pekka Orasmaa, President of the Labour Court of Finland and facilitated by Colin Sara secretary-general of EALCJ.

It was clear that there were wide variations in the steps taken to date by national governments to implement the two main discrimination Directives.

The United Kingdom had had specific laws on sex and racial discrimination for 25 years and on disability discrimination for five years. It also had a tribunal system which dealt with individual employment cases outside the normal courts system and was now hearing many thousand discrimination cases each year. Ireland has tried to produce a less formal system which specifically addressed the issues in the two Directives. Other countries were in different positions. Denmark has introduced a statute on race discrimination, but has none on age or disability discrimination.

The emphasis in Denmark has always been on the role of the social partners and collective agreements. The difficulty related to people who are not union members or subject to collective agreements. In Finland there is new specific legislation prohibiting discrimination, but few cases.

There is not very much in the way complementary Regulations. There is a new ombudsman for minorities.

In France the emphasis is on collective agreements and criminal sanctions.

In Germany there is a large network of labour courts at all levels, a Social Security Code guaranteeing integration of disabled people, a commission for disabled workers and Commission in relation to sex discrimination, a Part-time work Act together with strong factory committees and the availability of actions in the courts. Nevertheless the number of cases based specifically on discrimination are few.

In Iceland there is an Act relating to sex discrimination and giving equal rights to disabled people, together with a wide equality principle in the constitution and an ombudsman.

In Austria there is a big discussion about new anti-discrimination laws. Should they be general or specific to each type of discrimination? Should claims go to a special tribunal or be before a labour court? Can the municipalities be forced to change their laws, for example of giving housing priority to natives of the area?

In the Netherlands the emphasis throughout is on the importance of mediation, rather than litigation.

In Luxembourg there is an Equal Treatment Act of 1994, relating to discrimination of all kinds, together with a Commission, which, though not binding, is in practice accepted by all employers. There is a very large body of non-Luxembourgish employees.

In Norway (where the EEA has produced similar directives) there is no general law or constitutional provision relating to discrimination, but the European Convention on Human Rights is directly enforceable and there is a Gender Equality Act and a Work Protection Act, the latter giving protection against racial discrimination in respect of recruitment and dismissal.

In Sweden there are wide discrimination laws relating to ethnic grounds, belief, disability and sexual orientation. There is also an ombudsman in respect of each law. There may, however, need to be amendments to implement the Directive in relation to age discrimination.