



Newsletter No.9

December 2000

Dublin Castle is 2001 Venue for 6th EALCJ Congress **“Individual Rights in Employment: The Charter of Fundamental Rights of the European Union & Article 13 of the Treaty”**

Following detailed discussions during the Summer, the Association has accepted a kind offer by our Irish colleagues to host the next Annual Congress of the EALCJ. The event will take place between Thursday 11th and Saturday 13th October 2001 in the impressive setting of Dublin Castle, where the focus of attention will be upon European Union developments in the fields of fundamental social rights and equal opportunities for individual workers.

In particular, discussion will centre upon the early impact of the European Union’s *Charter of Fundamental Rights* finalised at the December 2000 Council meeting, together with the implications of the package of anti-discrimination and equal opportunities measures developed since the Finnish Presidency in 1999 and also finalised by the Council of Ministers at their December meeting.

An approach has been made to the European Commission with a view to obtaining support for the Dublin Congress, as well as to ensuring that the fruits of the meeting can be effectively fed into the Commission’s work in this important area.

Steps have also been taken to ensure the availability of accommodation at hotels within a short walk of the Dublin Castle venue.

The format of the Congress will follow that used successfully in Bath, Seville, Rome, Tenerife and Trier. Thus, the Secretariat will draw up a detailed questionnaire for completion by national delegates prior to the Dublin meeting. Rapporteurs will be appointed for each session, and it is anticipated that the final papers will be published shortly after the Congress. Discussions have already been held with Ashgate Publishers, who have agreed in principle to take on this task of publication for the Dublin material.

Details of the available facilities and prices in relation to the Dublin meeting – which will be conducted under the title “Individual Rights in Employment: The Charter of Fundamental Rights of the European Union & Article 13 of the Treaty” – will be circulated early in the New Year, together with the full Congress programme.

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Edited by Alan C. Neal

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2000 Technical Seminar on “The European Court of Justice and the Labour Court Judge: Working together now and in the future”

In collaboration with the European Academy of Law (ERA), Trier, and with the generous support of a number of colleagues from the European Court of Justice, Luxembourg, the Association organised a technical seminar in Trier, Germany, over the period 18-20 May 2000. The two-day technical seminar was held at the Trier premises of the ERA, and was preceded by a day in the Court of Justice, as the guests of the Court’s Luxembourg members, Judge Schintgen and Advocate-General Mischo.

Some thirty-five participants gathered to discuss a number of issues concerning the relationship of national Labour Courts to the European Court of Justice and current proposals for reform of the Luxembourg court as the European Union continues its progress towards enlargement in the run-up to the Nice Summit in December 2000.

Each of the technical working sessions proceeded on the basis of a presentation by an invited specialist speaker, followed by questions and discussion of national reports drawn up prior to the seminar by each of the national delegates. These national reports had been prepared in response to a template questionnaire drafted by the EALCJ Secretariat.

The Association was honoured to welcome Judge Lief Sevón, the Finnish Judge in the European Court of Justice, whose penetrating analysis of the strengths and weaknesses of that institution laid the foundation for a particularly lively and controversial debate. This followed a fascinating journey into the “inner workings” of the Court, from Herr Dieter Kraus, of the Cabinet to the Court’s United Kingdom member, Judge David Edward.

Feedback from the discussion sessions was given by John van Gelder, Michael Koch and Kate O’Mahony, whose reports – together with a selection of documents reflecting the proceedings of the seminar – will be included in a forthcoming Working Paper of the Association.

The Association would like to place on record its appreciation of the warmth with which our ERA hosts received the participants, and its gratitude to our distinguished guests from the European Court of Justice for providing us with their valuable insights and devoting so much of their precious time to this occasion.

Participants in the Trier Seminar

AUSTRIA	Judge Gerhard Kuras
FINLAND	Mr. Timo Havu Judge Pekka Orasmaa Mr Jorma Salonen
GERMANY	Judge Franz Josef Düwell Judge Franz Josef Jasper Judge Rainer Röder Judge Henning Topf Judge Karl-Johann Wittinghoff Judge Meinhard Zumfelde
ICELAND	Judge Eggert Oskarsson
IRELAND	Ms. Mary Faherty Mr. Peter O’Leary Ms. Kate O’Mahony
ITALY	Judge Paola Accardo Judge Giovanni Mammone Judge Aldo di Matteis
LUXEMBOURG	Judge Jean-Marie Hengen Judge Tom Moes
THE NETHERLANDS	Judge Taco van Peijpe
NORWAY	Judge Tor Mehl Mr. Jon Gisle
SWEDEN	Judge Inga Åkerlund Judge Lars Johan Eklund Judge Carina Gunnarsson Judge Michael Koch
UNITED KINGDOM	Mr. John van Gelder Mr. Michael Homfray-Davies Professor Alan Neal Mr. Colin Sara Mr. David Sneath Mrs. Catherine Tribe
ECJ	Mr. Dieter Kraus Judge Leif Sevón
ERA	Judge Ernst Merz
ADMINISTRATOR	Mrs. Ruth Whiteley

Treaty of Nice - Reforms for the ECJ and Court of First Instance

The draft Treaty of Nice, agreed at the Conference of the Representatives of the Governments of the Member States, meeting between 7 - 9 December 2000, contains a number of significant changes to the Treaty position as it concerns the European Court of Justice and the Court of First Instance. The following sets out the proposed new wording of the relevant Treaty provisions (as contained in the provisional text approved by the Intergovernmental Conference on institutional reform and published on 12 December 2000), together with various Declarations attached to the Treaty.

ARTICLE 220 TEC

The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.

In addition, judicial panels may be attached to the Court of First Instance under the conditions laid down in Article 225a in order to exercise, in certain specific areas, the judicial competence laid down in this Treaty.

ARTICLE 221 TEC

The Court of Justice shall consist of one judge from each Member State.

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.

When provided for in the Statute, the Court of Justice may also sit in plenary session.

ARTICLE 222 TEC

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement.

ARTICLE 223 TEC

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. The President of the Court of Justice may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. These shall require the approval of the Council, acting by qualified majority.

ARTICLE 224 TEC

The Court of First Instance shall comprise at least one judge from each Member State. The number of Judges shall be determined by the Statute of the Court of Justice. The Statute may provide for the Court of First Instance to be assisted by Advocates-General.

The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the Court of First Instance from among their number for a term of three years. The President of the Court of First Instance may be re-elected.

The Court of First Instance shall appoint its Registrar and lay down the rules governing his service.

The Court of First Instance shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by qualified majority.

Unless the Statute of the Court of Justice provides otherwise, the provisions of this Treaty relating to the Court of Justice shall apply to the Court of First Instance.

ARTICLE 225 TEC

1. The Court of First Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 230, 232, 235, 236

and 238, with the exception of those assigned to a judicial panel and those reserved in the Statute for the Court of Justice.

The Statute may provide for the Court of First Instance to have jurisdiction for other classes of action or proceeding.

Decisions given by the Court of First Instance under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The Court of First Instance shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article 225a.

Decisions given by the Court of First Instance under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

3. The Court of First Instance shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 234, in specific areas laid down by the Statute.

Where the Court of First Instance considers that the case requires a decision of principle likely to affect the unity or consistency of Community law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the Court of First Instance on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Community law being affected.

ARTICLE 225a TEC

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court or at the request of the Court of Justice and after consulting the European Parliament and the Commission, may create judicial panels to hear and determine at first instance certain classes of action or proceeding brought in specific areas.

The Decision establishing a judicial panel shall lay down the rules on the organisation of the panel and the extent of the jurisdiction conferred upon it.

Decisions given by judicial panels may be subject to a right of appeal on points of law only or, when provided for in the decision establishing the panel, a right of appeal also on matters of fact, before the Court of First Instance.

The members of the judicial panels shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council acting unanimously.

The judicial panels shall establish their Rules of Procedure

in agreement with the Court of Justice. Those Rules shall require the approval of the Council, acting by qualified majority.

Unless the Decision establishing the judicial panels provides otherwise, the provisions of the Treaty relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial panels.

ARTICLE 229a TEC

Without prejudice to the other provisions of this Treaty, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice in disputes relating to the application of acts adopted on the basis of this Treaty which create Community industrial property rights. The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements.

ARTICLE 230 TEC

The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors and by the ECB for the purpose of protecting their prerogatives.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

ARTICLE 245 TEC

The Statute of the Court of Justice shall be laid down in a separate Protocol.

The Council, acting unanimously at the request of the Court of Justice and after consulting the European Parliament and the Commission, or at the request of the Commission and after consulting the European Parliament and the Court of Justice, may amend the provisions of the Statute with the exception of Title I.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 225 TEC

The Conference calls on the Court of Justice and the Commission to give overall consideration as soon as possible to the division of competence between the Court of Justice and the Court of First Instance, in particular in the area of direct actions, and to submit suitable proposals for examination by the competent bodies as soon as the revised Treaty enters into force.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 225(2) AND (3) TEC

The Conference considers that the essential provisions of the review procedure in Article 225(2) and (3) should be defined in the Statute of the Court of Justice. Those provisions should in particular specify:

- the role of the parties in proceedings before the Court of Justice, in order to safeguard their rights;
- the effect of the review procedure on the enforceability of the decision of the Court of First Instance;
- the effect of the Court of Justice decision on the dispute between the parties.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 225(2) AND (3) TEC

The Conference considers that when the Council adopts the provisions of the Statute which are necessary to implement Article 225(2) and (3), it should put a procedure in place to ensure that the practical operation of those provisions is evaluated no later than three years after their entry into force.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 225(2) TEC

The Conference considers that, in exceptional cases in which the Court of Justice decides to review a decision of the Court of First Instance on a question referred for a preliminary ruling, it should decide by an emergency procedure.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 225A TEC

The Conference asks the Court of Justice and the Commission to prepare as swiftly as possible a draft decision establishing a judicial panel which is competent to deliver judgments at first instance on disputes between the Community and its servants.

DECLARATION TO BE INCLUDED IN THE FINAL ACT OF THE CONFERENCE ON ARTICLE 229A TEC

The Conference considers that Article 229a does not prejudice the choice of the judicial framework which may be set up to deal with disputes relating to the application of acts adopted on the basis of the Treaty establishing the European Community which create Community industrial property rights.

Web-sites and Links for information concerning the ECJ and EU Labour Law

The principal point of entry for English language web-based information concerning the European Court of Justice and the Court of First Instance is "<http://www.curia.eu.int>". From this page it is possible to view and download information concerning the organisation, workings, and rules of procedure of the judicial institutions, as well as to access full-text versions of recent judgments in multi-language format. The site also contains information about the Court working diaries, including dates fixed for particular hearings and delivery of judgments.

For more general documentation relating to the European Union, its institutions, and its activities, the main entry point is "<http://www.europa.eu.int>".

The relevant starting-point for information and documents relating to European Union employment law and social policy is the home page of the Commission's Social Affairs Directorate, which is at "http://europa.eu.int/comm/dgs/employment_social/index_en.htm".

The Annual General Meeting of the EALCJ, held during the course of the Trier Annual Congress on Saturday 20 May 2000, unanimously made the following decisions in respect of Officers of the Association for the coming period:

Officers of the European Association

President (2000-2001) Ms. Mary Faherty (*Ireland*)
 Immediate Past-President (2000-2001) Judge Gustav Maier (*Austria*)
 President-Elect (2000-2001) Judge Michael Koch (*Sweden*)

The Meeting also agreed to renew the periods of office for the members of the Secretariat, and authorised the Secretariat to enter into discussions with a view to the organisation of future Annual Congresses and to undertake work on the development of a web-site and more intensive publishing activity for the Association:

Secretariat

Secretary-General (2000-2003) Mr. Colin Sara
 Treasurer (2000-2003) Mr. Michael Homfrey-Davies
 Convenor (2000-2003) Professor Alan C. Neal

EALCJ Web Site

Information about the constitution, activities, and publications of the EALCJ can be obtained from the EALCJ Web Site. This includes all of the Newsletters of the Association, which may be downloaded in .pdf format. The EALCJ site is accessible at:

<http://www.labourcourtjudges.com>

The site also facilitates links to the European Court of Justice and the European Court of Human Rights, together with a wide variety of links to web-sites maintained by the Labour Courts of the European countries, and many of the most significant sources of material in the fields of European labour law and social policy.

The EALCJ *Newsletter* is the official organ of the European Association of Labour Court Judges, which is a Company limited by guarantee in the United Kingdom. The *Newsletter* aims to provide current news and information about the activities of the Association and its members. Contributors to the *Newsletter* express their personal views, and should not be taken necessarily to represent the official positions adopted by the Courts or Tribunals in which they sit, or the views held or expressed by the governments or any government agency of the Member States or legal systems in which they act.

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