



Newsletter No.12

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7th Annual EALCJ Congress — Paris 2003

“Termination of Employment at the Initiative of the Employer: Challenges for Socially Responsible Corporate Re-structuring?”

Final preparations are now being made for the 7th Annual Congress of the EALCJ which will take place on 27th and 28th November 2003 in Paris. This *Newsletter* contains the latest details of that event, together with the preparatory Questionnaire which will be used as the basis for the technical working sessions during the course of that meeting.

Delegates will be welcomed from the ten Accession Countries who are expected to join the European Union as full members during 2004, as well as from the existing EU and EEA members of the EALCJ. This provides an important early opportunity for technical discussions of the subject-matter relating to termination of employment in the enlarged European Union. Recognising this, the European Commission has generously agreed to provide a measure of financial support to the EALCJ in order to organise the Paris meeting and to complete and publish the technical study which it is planned should emerge from the work done there.

It should be noted that, by reason of technical problems concerning installation of translation facilities in the Grand'Chambre of the Cour de Cassation, the venue for the technical meetings on Thursday 27 and Friday 28 November 2003 has been changed. These will now take place in the Millennium Suite, located in the Embassy of the United Kingdom at 35, Rue du Faubourg St. Honoré (in the heart of Paris, just off the Place de la Concorde). Registration will take place from 09.00 on the morning of 27 November. Throughout the working sessions there will be simultaneous translation (French/English), in line with the EALCJ's policy of working in English plus the language of the host country. Working lunches will be provided in the Grand

Foyer of the British Embassy, and a formal Congress Dinner has been arranged for the evening of Thursday 27 November.

All members of the EALCJ should now have received the technical working programme, information about hotel accommodation, and a pack of background material relating to the Paris Congress. In addition to the Questionnaire set out in this *Newsletter*, a copy of a fuller technical questionnaire (which will eventually form the basis of a more thoroughgoing study of termination in the enlarged European Union) has been distributed by way of background information.

Several national delegations have already indicated the names of their members and intended travel arrangements. In order to enable the Secretariat to finalise arrangements in Paris, it would be appreciated if delegates could contact the Secretariat (Jill Farmer or Professor Alan Neal) as a matter of urgency, to confirm registration and completion of responses to the preparatory Questionnaire.

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Edited by Alan C. Neal

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Termination of Employment at the Initiative of the Employer: Challenges for Socially Responsible Corporate Re-structuring?

The European Commission undertook a study (on the basis of a detailed questionnaire containing 165 questions) in 1992, and published an Expert Committee Report in 1997. That Report reflected the position in 15 Member States as at 31st March 1997.

The European Commission has recently decided to update the material in the 1997 Report. A new Expert Committee is currently being appointed, and is expected to begin its work early in 2004. That updating concerns only the present 15 Member States, and is limited to the subject-matter dealt with in the 1992 questionnaire.

The EALCJ's Paris meeting in November 2003 has been planned together with the European Commission, in order to provide a first opportunity to address some of the key issues concerned with termination of employment at the initiative of the employer. The importance of this preliminary consideration is that it will provide a perspective from European judges – whose expertise was not directly utilised in the preparation of the 1997 Report.

In addition to providing an opportunity to raise and discuss some of the key issues (which, of necessity, will only be possible in a limited form during the course of two working days), the meeting is seen by the European Commission as offering the chance to include representatives from the Accession Countries who will join the Union in 2004. The EALCJ is being used by the European Commission as the appropriate vehicle for bringing together the existing EU Member States, 2 of the EEA States (Iceland and Norway), and the 10 new joining States.

The European Commission has informed the EALCJ that financial support has been granted to contribute towards the costs of participation for a delegation from each of 25 countries, with each national delegation being constituted of up to three persons. [No financial support is available for the EEA States – reflecting the different budget arrangements in the European Commission for those States.]

The technical organisation of the meeting has been

planned on the same basis as each of the annual meetings of the EALCJ between 1996 and 2002. This involves a brief questionnaire to be completed by national delegates, which will then be synthesised by the Secretariat and presented as a “basic report” for the purposes of discussion at the meeting.

On the basis of the responses to the questionnaires, and the preliminary “general report” presented to the meeting on 27 November, a full report of the proceedings will be finalised, incorporating comments and observations given orally during the Paris meeting. A project supervisor has been employed to undertake this task, which should be complete towards the end of January 2004. This Report will be submitted to the European Commission, and is required in return for the financial support provided for the Paris meeting.

The European Commission's own Expert Committee will begin its work in the new year 2004. This is currently expected to take six months in order to update the data in relation to the existing 15 Member States. The EALCJ plays no part in that process.

The EALCJ will continue its work (independently of the European Commission) with the 10 Accession States, in the hope that the extended questionnaire (all 165 questions) can be completed by the national delegations from those States during the period up until the end of March 2004. This will then enable a full picture of the position in those States to be obtained before the date set for their accession (currently envisaged as May 2004).

On the basis of (i) the report of the proceedings from the Paris meeting, together with (ii) the completed information provision from the Accession States, and (iii) the updated information provided by the existing 15 Member States and the 2 EEA States, the EALCJ (under the direction of its project supervisor) will complete a full study of the area concerning termination of employment at the initiative of the employer, which it is hoped will be ready for publication late in 2004.

Preparatory Questionnaire

This questionnaire is intended to help each national delegation to explain how their national system deals with the problems encountered in this area. Please try to explain your responses as fully as possible, even if it is difficult to fit the responses precisely into the framework of the specific questions:

1. What are the sources of the law of termination of employment relationships in your country?
 - Constitution
 - Legislation
 - Judge-made law
2. Does your system recognise the following methods of termination of employment?
 - Direct dismissal
 - Termination at the instigation of the employee due to the conduct of the employer (“constructive dismissal”)
 - Termination by the employee (“resignation”)
 - Termination by mutual agreement
 - Termination by operation of law.
3. Does this list reflect the methods of termination in your country or are there any other methods of termination?
4. Are there special rules for particular sectors?
 - (e.g. civil servants, domestic servants, farm labourers, clerics, or other “special categories”, such as older or younger workers, probationers, etc.)

5. Are there different rules for “atypical workers”?
- (*e.g.* fixed-term contracts, part-time employees, temporary work, intermittent workers, home workers, trainees, workers from temporary works agencies)?
6. What formalities are required to terminate an employment relationship?
- whether the relationship is determined (*i*) by the employer, (*ii*) by the employee, (*iii*) by mutual agreement, or (*iv*) by the expiry of the contract or other supervening event?
7. Does your system protect the employee from “unjustified dismissal” by the employer?
- During the contractual or statutory notice period
 - After the end of the notice period
8. Does your system recognise the following types of “justified dismissal”?
- Dismissal due to the misconduct of the employee
 - Dismissal due to poor performance by the employee
 - Dismissal due to the ill-health of the employee
 - Dismissal due to redundancy
 - Dismissal due to re-organisation by the employee
9. Does your system recognise the following types of “automatically unfair dismissal”?
- Dismissal due to a transfer of the undertaking
 - Dismissal due to membership or involvement in a trade union
 - Dismissal due to sex discrimination
 - Dismissal due to racial discrimination
 - Dismissal due to disability
 - Dismissal due to age
 - Dismissal on religious grounds
 - Dismissal by reason of sexual orientation
 - Dismissal due to “whistle-blowing”
 - Dismissal due to victimisation
 - Dismissal due to pregnancy or maternity
10. In your system, can you identify other kinds or “justified” or “automatically unfair” types of dismissal?
11. Are there any collective agreements in your country laying down rules on these subjects?
- Please give details.
 - What proportion of the labour force do these agreements cover?
12. What procedures have to be followed in order that a dismissal for any of the reasons set out in question 8 will be permitted in your system?
13. What are the effects in your system of dismissal, whether justified or not, on the contract, ancillary rights, severance payments, pension rights, or public/private sickness insurance?
14. Does your system recognise the concept of dismissal at the initiative of the employee due to the employer’s conduct?
- How is this dealt with in your jurisdiction?
 - Does the effect differ from a dismissal by the employer?
15. What are the remedies for unjustified dismissal in your system?
- Reinstatement
 - Re-engagement in different work
 - Compensation
 - Fines or other criminal penalties
 - Other
16. Can reinstatement in employment be enforced in your country:
- Without the agreement of the employer
 - Without the agreement of the employee
17. Does reinstatement or resumption of the contractual relationship necessarily result in the employee actually returning to work?
- What happens if the employer refuses to accept the employee back?
18. What are the financial limits on compensation?
- Does compensation seek to recompense the employee for all financial and emotional loss suffered?
19. What is the procedure in your system for obtaining a remedy?
- A claim before the civil court
 - A claim before the labour court
 - A claim before an administrative tribunal
 - A claim before a specialist tribunal
 - Administrative action by the state
 - Criminal or quasi-criminal action.
20. Is the claimant in your system entitled to public legal aid?
- If not, is there any agency available for advice or support?
21. How can an Order for financial compensation be enforced in your system?
22. Approximately how many claims of unjustified dismissal are brought in your country each year?
- What proportion of these is successful?

NOTICE

The Annual General Meeting of the European Association of Labour Court Judges will be held in the Millennium Suite, Embassy of the United Kingdom, 35 Rue du Faubourg St. Honoré, Paris, at 17.00 on Friday 28th October 2003.

A final Agenda for this meeting will be circulated to Executive Committee members in advance. Would any member of the Executive Committee who wishes to raise an item during the course of the Annual General Meeting please notify the Convenor, Professor Neal, or the Secretary-General, Mr. Sara, not later than noon on Friday 21st November 2003.

Officers of the European Association

President (2002-2003) Judge Pekka Orasmaa (*Finland*)
 Immediate Past-President (2001-2002) Judge Michael Koch (*Sweden*)

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 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 site is accessible at:

<http://www.labourcourtjudges.com>

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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