

**EALCJ**

*The European  
Association  
of  
Labour Court  
Judges*

**Newsletter**

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**The Sixteenth Annual Congress of  
the European Association of Labour Court Judges  
will be held  
at the Hotel Berlin Berlin  
on  
Friday 1<sup>st</sup> and Saturday 2<sup>nd</sup> June 2012**

**The Subject of the Congress will be  
“Equality in Employment for Older and Disabled  
people”**

Following our successful Congress in Malta in 2011 you will be pleased to know that our German colleagues have agreed to host the 2012 Congress. The Congress will take place in the newly refurbished Hotel Berlin Berlin in the heart of the German capital, well known as one of the most vibrant cities in Europe.



The subject of the Congress is "Equality in Employment for Older and Disabled People". With an increasingly aged population and many older people keen to remain economically active (while others are forced to do so for financial reasons) it is increasingly important that they should not be unfairly disadvantaged. There is also increasing awareness that many people who suffer from disabilities can still make an important economic contribution, if given the chance, and if reasonable adjustments are made to accommodate their disabilities.

Michael Homfray-Davies has already visited Berlin and met up with Reinhard Schinz who you will know from Malta. The programme is not yet finalised, but it will follow our usual format with sessions all day on Friday and on Saturday morning. There will be an informal meal at the hotel on the Thursday evening, a

more formal meal on Friday night, possibly in the Reichstag, and then a social programme on Saturday afternoon and evening.

Application has been made to the European Commission for funding. We are reasonably optimistic, but have not yet heard the outcome. If we get funding we will be able to support travel and accommodation for all delegates.

### **Report on Malta Congress**

Abigail Lofaro, and the Maltese Judges did us proud. The Chief Justice and the Minister of Justice and Home Affairs opened our Congress. And the Minister provided us with a fine dinner at the magnificent Auberge d'Aragon, the 15<sup>th</sup> Century home to the Knights Hospitaller of St John. We stayed in the luxurious Grand Hotel Excelsior on the edge of Malta's historic (but tiny) capital, Valetta,



Such hospitality put us on our mettle to provide a substantive discussion and, as ever, our delegates did not disappoint. The keynote address was given by Jonas Grimheden of the Fundamental Rights Agency.

We were deposited right into the real world – a world where migrant workers are abused and ignored - where desperate people cross the Mediterranean from north Africa and find themselves in Malta or Lampedusa - where there are maybe a million illegal workers in Italy - and where Roma people face open discrimination in eastern Europe;

The FRA is principally a research organisation and Jonas summarised their comprehensive research, based on interviews with migrant workers throughout Europe. The Report amounted to a catalogue of discrimination, prejudice and disadvantage, with some countries substantially worse than others.

The problem is not the anti-discrimination laws, which are in place in all EU countries, but their enforcement. Judges can adjudicate on those laws, but only if the cases come before them. Access to justice, therefore, is crucial.

Inevitably we dealt first with the scope of the jurisdiction. Illegal immigrants are excluded from employment protection, but they still have basic human rights and, often, they are exploited simply because of their lack of status before the courts. We had a substantial discussion on whether they should be treated as criminals and excluded from all protection, or whether they should be provided with at least minimum rights.

Workers may be tempted to be complicit in attempts to avoid taxation or to work excessive hours. Some do so for their own gain, but

others feel they have little choice. Does their role in this illegality exclude them from all protection?

Even where they are within the scope of the legislation and working quite legally, migrant workers may not be treated as “employees” or “workers” because of their casual or seasonal work. They may also lack knowledge of the national legal systems; they may have language difficulties – court proceedings are nearly always in the language or languages of the host country, they may not know how to access legal aid.

Representation may not be available. They are probably not union members and may not get union support. There may be no legal aid. Interpreters are expensive.

It must be remembered, however, that migrant workers make a valuable contribution to the economies of the host countries and that they may well be happy to work there and contribute to mutual respect and understanding in the “global village”. They must not always be categorised as victims.

We also acknowledged that the hard fought rights obtained by native workers can be threatened by migrants from poorer countries who work at substantially lower wages and in inferior conditions. We acknowledge too that there are financial constraints on the Courts’ system and migrant workers must not be seen to be given preferential treatment.

While these problems cannot be solved by a single Congress, it is important that judges and, indeed, all people involved, should be aware of the dilemmas.

The particular interest of the European Commission was in posted workers. The conflict between the freedom of movement of workers, freedom of establishment and freedom to provide services on the one hand and the right of collective action by native workers who feel threatened by cheaper migrant workers was addressed at our Congress in Liverpool, but the problems still continue and we developed out discussions accordingly..

### **FRA Seminar**

The Secretary-General attended the seminar held in Strasbourg on 21<sup>st</sup> March to launch the “Handbook on non-discrimination law” published jointly by the Fundamental Rights Agency and the European Court of Human Rights. The booklet, which runs to 147 pages, seeks to set out in simple terms the European anti-discrimination legal framework. It is accompanied by a DVD and the FRA are keen that it be distributed as widely as possible and can be used as a training resource. It is available, free of charge, from the FRA – [info@fra.europa.eu](mailto:info@fra.europa.eu).

At the seminar we heard from judges of the ECHR and the ECJ, who highlighted the synergy or possible conflict between the EU Charter and the Human Rights Charter and from

Mark Butler, a young academic who was the main author of the booklet.

### **European Employment Law Cases**

On the subject of resources, we remind you once again on this valuable resource, which concentrates not only on European cases, but also national cases with European interest. Full details are on <http://www.eelc-online.com>.

### **Officers**

We are delighted that Michel Blatman, Judge of the Cour de Cassation of France has agreed to become our new President, to take over from Judge Abigail Lofaro of Malta.

- President Michel Blatman
- Secretary-general Colin Sara
- Convenor Prof Alan Neal
- Treasurer Michael Homfray-Davies

### **National Representatives**

Austria	Judge Marleis Glawischnig
Belgium	Judge Alain Simon
Czech Rep	Judge Zedenek Novotny
Eire (EAT)	Kate O'Mahony
Eire (Lab Ct)	Kevin Duffy
Estonia	Judge Mare Merimaa
Finland	Judge Jorma Saloheimo
France	Judge Michel Blatman
Germany	Judge Helmut Zimmerman
Greece	Andriane Papadopolhou
Hungary	Judge Hando Tunde
Italy	Judge Giovanni Mammone
Lithuania	Judge Diana Labokeite
Luxembourg	Judge Tom Moes
Malta	Judge Abigail Lofaro
Netherlands	Judge Gerrard Boot
Norway	Judge Jakob Wahl
Slovenia	Judge Miran Blaha
U K	Judge John van Gelder