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Committee on Civil Liberties, Justice and Home Affairs

PROGRAMME

Public Seminar

on

Judges and legislators for a multi-level protection of fundamental rights in Europe

Monday 8 October 2007

15:00 – 18:30

**Room P4B001
(PHS building)**

Brussels

INTRODUCTION

1. In the context of Mr Giusto Catania's report on the "Situation of Fundamental Rights in the EU 2004 -2007", the objective of this seminar is to obtain an overview of the kinds of problems facing judges and legislators at national and European level in connection with the protection of fundamental rights. The proposals and the topics raised during the meeting will also afford essential preparatory material for the European Parliament's annual debate on progress in the freedom, security and justice area as provided for in the Article 39 of the EU treaty.

After the April 2005 conference "Promoting EU Fundamental Rights Policy: from words to deeds or how to make rights a reality?"¹, this seminar will afford a new occasion to re-launch the dialogue between members of the European and national parliaments and judges at European and national level.

2. Since 2005, commitments which, it is hoped, will strengthen the EU's ability to become an Area of Freedom, Security and Justice have become more relevant in the context of the institutional evolution of the European Union:

a) **in ordinary legislative work** owing to the increasing volume of legislative acts adopted which are directly defining at EU level the scope of protection of some fundamental rights,

b) **at the treaty level** as is confirmed by the current Intergovernmental Conference (IGC) negotiations on the 'Reform Treaty', since this instrument will probably provide for EU accession to the ECHR and incorporate the Charter of Fundamental Rights into the EU Treaty and widen the "rule of law" principle by extending judicial review by the European Court of Justice of the acts of EU institutions while leaving behind the current "pillars" structure so as to define a single, simplified legal and institutional framework.

3. At the same time, there has been a perceptible opening-up of EU legislation towards European and national courts in their dealings with EU legislation:

- ECJ rulings aimed at the need to preserve mutual trust when applying third-pillar legislation², preserving the primacy of the fundamental rights over some instruments adopted in the fight against terrorism³ and the relevance of fundamental rights in the family reunification directive,

- rulings of Constitutional Courts in connection with the transposition of EU legislation such as the European Arrest Warrant,

4. Having regard to these parallel evolutions, it is important to improve mutual understanding between judges and legislators, bearing in mind that before next European elections, fundamental rights could move to the heart of EU activities, not only stand as an external limit to the EU policies as it was the case in the past 50 years.

5. Despite of growing institutional strength of fundamental rights protection systems, some experts find that there has been an erosion of the quality of human rights protection and

¹ http://www.europarl.europa.eu/hearings/20050425/libe/programme_en.pdf

² See Joined Cases C-187/01 and C-385/01 *Gozutok and Brugge* [2003] ECR I-1345

³ See the background note on the work of the Parliamentary Assembly of the Council of Europe, 9 July 2007. Section IV of the note describes the situation concerning "UN Security Council and EU black lists"

of public awareness of human rights. The following problems are mentioned¹: lack of political will and of democratic control in matters of national security, insufficient inner-State cooperation, lack of clear articulation of human rights values, different European standards and their misunderstanding by citizens, legislative gaps, inadequate implementation of international agreements, etc. It would be very interesting for members of the European Parliament to learn how different courts deal with these problems and how the situation is evolving over time.

6. Therefore, the question which the seminar is called upon to answer is: "How to improve the role of the EU legislature and the judiciary role in the multi-level protection of fundamental rights?" It could also be worth discussing whether, after the adoption of the Charter and the EU's accession to the ECHR, the Strasbourg Court or constitutional courts will still consider it possible to depart from the European law if its transposition could affect higher standards of fundamental rights protection afforded by national law².

7. From an EU citizens' perspective, there will soon be two ways of seeking recourse to European-Level judges. On the one hand, the European Court of Human Rights will still be very significant in championing and providing a direct protection of citizens' fundamental rights. On the other hand, Article 9F of the Reform Treaty will open the possibility for European Citizens to enforce their rights also in the European Court of Justice (ECJ) in Luxembourg. Citizens will therefore have two courts where they would be entitled to lodge their own complaints directly. Additionally Article 9F will also extend further the role of the ECJ as the ECJ will be able to give preliminary rulings at the request of the national tribunals and courts on the interpretation of EU law or the validity of acts adopted by the EU institutions also for the domains actually covered by the so called "third pillar".

The EU and ECHR systems of human rights protection sometimes complement each other, sometimes compete or duplicate each other. The speakers are asked to analyse this situation, having regard to the changes taking place.

¹ See more in conclusions of the Round Table organised by the Council of Europe Commissioner for Human Rights:
<https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=1127946&SecMode=1&Admin=0&Usage=2&InstranetImage=92239>

² ECHR judgments *Bosphorus* and *Solange I and II*

PANEL I
(15:00-16:30)

**SHAPING THE PRINCIPLES OF EUROPEAN FUNDAMENTAL RIGHTS
PROTECTION**

The 50th anniversary of the European project is a good moment to discuss the influence of European laws on national human rights protection systems guarded by Constitutional Courts. What interactions are taking place between European courts and national constitutional courts?

Recently the phenomenon of the cross-referencing in the Constitutional Courts judgement has increased in the world and in Europe. This could be considered as a sign of a growing aspiration of the Constitutional Courts to share a common culture of the fundamental rights protection. As these principles will also be a reference for the European and national legislator it will be worth to discuss how to improve the dialogue and the awareness in this domain from the Constitutional level to the ordinary judge.

With the new Treaty, the European Union might soon become a member of the European Convention of Human Rights. Interactions between EU legislation, the Charter and the Convention are already taking place, but these should become even more intensive with the new developments. How would the system of protection of human rights change - both at European and national level?

Opening remarks by the Mr. Jean-Marie CAVADA, Chairman of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament

15:00 - 15:45 Presentations

Mrs. Françoise TULKENS, Section President at European Court of Human Rights

Mr. Egils LEVITS, Judge at the Court of Justice of the European Communities

Mr. Kestutis LAPINSKAS, Judge at the Constitutional Court of the Republic of Lithuania, Representative of the Court chairing the Conference of the European Constitutional Courts

15:45-16:30 Discussion

PANEL II
(16.30-17.30)

**THE CHALLENGES FACED BY NATIONAL JUDGES AND LEGISLATORS IN
APPLYING EU RULES IN THE FOLLOWING SPECIFIC DOMAINS:**

16:30-17:00 Presentations

- **Family reunification** - **Professor Valerio ONIDA**, *former President of the Constitutional Court of Italy*
- **Fight against terrorism** - **Professor Henri LABAYLE**, *Université de Pau et des pays de l'Ardour*

17:00-17:30 Discussion

PANEL III
(17.30 -18.30)

RAISING AWARENESS AMONG NATIONAL JUDGES ON FUNDAMENTAL RIGHTS

The European Commission has recently adopted a new multi-annual programme 2007-2013 aimed at of awareness rising of fundamental rights protection within the general society but also among the European judges. What shall be done to improve knowledge and awareness among judges of national courts about existing systems of fundamental rights protection? How the changes in this field at the European level could influence the work of the magistrates? What could be done to help judges in their work?

17:30 - 17:50 Presentations

- **Mr. Yves KREINS**, *Secretary General of Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union and President of the Chamber and Council of State of Belgium*
- **Mr. Virgilijus VALANČIUS**, *President of the European Associations of Judges and President of the Supreme Administrative Court of Lithuania*
- **Mr. Miguel CARMONA RUANO**, *Président of Magistrats Européens pour la Démocratie et les Libertés and President of Audiencia Provincial de Séville (Spain)*

17:50 - 18:15 Interventions

Closing remarks by the rapporteur Mr. Giusto Catania

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

The floor will be given to Members in the order in which requests are received. Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French) in advance to the secretariat (email: ip-libe@europarl.europa.eu). These documents will be circulated during the meeting.

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (ip-libe@europarl.europa.eu) by **5 October 2007 (at noon)**. It is essential to provide us with your **full name, address and date of birth**. Without this information, the Security Service will not provide entry passes.

Simultaneous interpretation will be available in the following languages : EN, FR, DE, IT, NL, ES, HU, EL, PT, RO, SV, PL

Committee on Civil Liberties, Justice and Home Affairs	Telephone	Address
Emilio De CAPITANI <i>Head of Unit</i>	+32.2.284.35.08	European Parliament Rue Wiertz 60 RMD 01J032 B-1047 Brussels
Tomasz BANKA <i>Administrator</i>	+32.2.283.14.84	European Parliament Rue Wiertz 60 RMD 01J006 B-1047 Brussels
Policy Department (Study and Research)	Telephone	Address
Joanna APAP <i>Administrator</i>	+32.2.283.21.05	European Parliament Rue Wiertz 60 RMD 3J034 1047 Brussels
Jean-Louis ANTOINE- GREGOIRE <i>Administrator</i>	+32.2.284.27.53	European Parliament Rue Wiertz 60 RMD 3J016 1047 Brussels
Seminar Secretariat ip-libe@europarl.europa.eu	Telephone	Address
Ryszard DE GROOT <i>Assistant</i>	+32.2.284.07.95	European Parliament Rue Wiertz 60 RMD 1J036 1047 Brussels
Maria LAZAROVA <i>Assistant</i>	+32.2.284.20.94	European Parliament Rue Wiertz 60 RMD 1J044 1047 Brussels