

First European Jurists Forum Held in Nuremberg

By Karen Raible and Cristina Hoss

Suggested Citation: Karen Raible and Cristina Hoss, *First European Jurists Forum Held in Nuremberg*, 2 German Law Journal (2001), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=99>

[1] In the middle of the 19th century Jurists Forums were founded in several European countries, including Germany, Switzerland, the Scandinavian countries, the Netherlands, Italy and Hungary. The aim of the institution was to assemble practitioners and academics, in order to discuss contemporary legal problems with the goal of influencing jurisprudence and legislation. The activities of the *Deutscher Juristentag* (German Jurists' Forum) were interrupted after Hitler came to power, primarily because the German Jurists' Forum refused to exclude its Jewish members. The organization was resurrected after the Second World War, and has taken a leading role in influencing the jurisprudence of the Bundesgerichtshof (BGH -- German Federal Court of Justice), for example in the area of product liability and family law. (1) [2] Reflecting this tradition, the German, Swiss and Austrian Jurists' Forums founded, 50 years after the establishment of the European Community of Coal and Steel, the First European Jurists Forum, which took place in Nuremberg, Germany, from the 13th to the 15th of September, 2001. Because of its history, as the city that hosted large-scale Nazi party rallies and later the eponymous war crimes trials, Nuremberg now makes a concerted effort to promote the importance of human rights protections. The city was awarded the UNESCO Prize for Human Rights Education in 2000. [3] At the Forum's opening ceremony on September 13th, speeches were given by politicians from the European Union, France and Germany (Mme Lebranchu, *Garde des Sceaux et Ministre de la Justice*; Mrs. Däubler-Gmelin, *Bundesjustizministerin*; and Mr. Stoiber, *Ministerpräsident des Freistaates Bayern*). The Portuguese Commissioner for Justice and Home Affairs, António Vitorino, along with the President of the European Court of Justice, Gil Carlos Rodríguez Iglesias, also spoke. Both Mr. Vitorino and President Rodríguez Iglesias insisted that they would give importance to the outcome of the Jurists' Forum. [4] Over the next two days, discussions took place in three workshops with topics as diverse as: "The citizen in the Union" (Workshop 1); "Corporate activity in the Community" (Workshop 2); and "Judicial cooperation in the Union" (Workshop 3). [5] The introductory statement of the first workshop on the citizen in the Union was made by Prof. Dr. Stefano Rodotà, Rome. Being a participant at the Convention that drafted the Charter of Fundamental Rights of the European Union, (2) a task entrusted to the Convention by the European Council in Cologne in June, 1999, he summarized the content of the Charter and stressed its importance despite its unclear legal status. Prof. Dr. Grainne de Búrca from the European University Institute in Florence reported on the further development of citizenship in the European Union. The participants of the first workshop proposed that the Charter of Fundamental Rights should be considered in all decisions taken by the European Union and by its Member States. Several examples were cited in which different institutions had already referred to the Charter of Fundamental Rights, such as the Spanish Constitutional Court in a judgment in which basic questions on data protection had to be solved, (3) and in the opinions of some Advocates General of the European Court of Justice. (4) Additionally, the European Commission, in one of its communications, committed itself to check any proposal for a legislative or regulatory act for its consistency with the Charter of Fundamental Rights. (5) Since the Charter of Fundamental Rights was regarded as the "first piece" of a constitution for the European Union and as a tool for increasing the citizens' identification with the European Union, most of the participants deemed it necessary to give the Charter a legally binding effect. Closely connected with the Charter of Fundamental Rights were questions concerning the development of a citizenship of the Union. The participants emphasized that the Charter of Fundamental Rights was primarily, but not exclusively, addressed to the citizens of the Union. There are several provisions which refer to a person as such. (6) A European Union citizenship does not justify, according to the prevailing opinion of those participating in the workshop, discrimination against third-country nationals. [6] The second workshop, on the corporate activity in the Community, discussed company law and tax. Among the participants were those who postulated a more general and systematic development of Community law in these areas and those who took a realistic view and were in favor of taking smaller steps. Prof. Dr. Eddy Wymeersch, Gent, and Prof. Dr. Guglielmo Maisto, Milano, rapporteurs for this workshop, introduced several proposals for reform. The general-rapporteur, Prof. Dr. Wolfgang Schön, Bonn, demonstrated the interrelationship between company law and tax law in the sense that the renunciation of harmonization in one area would require harmonization in the other area. [7] The third workshop addressed judicial co-operation in the Union, both in civil and criminal matters. Dr. Günter Wortsch (President of the Landgericht für Strafsachen, Vienna) presided, and the rapporteurs were Antonia Iliá (Co-operation in civil matters), Joaquín Delgado Martín (Co-operation in criminal law) and Professor Neil Andrews (Co-operation in Civil procedure). The purpose of the discussion was not to report on the current-situation, but to exchange some experiences as well as to elaborate proposals in order to establish an effective co-operation in the Union. Three topics were, initially separated but later merged during the discussion, due to their strong connection. [8] To begin, the participants exchanged their frustrating experiences from practice concerning judicial assistance in civil and criminal law between the member-states. Surprisingly, one of the main causes of dysfunction of judicial assistance is judicial ignorance concerning existing structures. Not surprisingly, language barriers also played a considerable role in these experiences. Another reason cited for the dysfunction is the lack of good will on the part of the domestic administrative agencies. That is the reason why some of the practitioners proposed the abolition of administrative control in matters of judicial assistance, increasing instead the direct contacts between judicial organs. During the discussion some participants --mostly prosecutors-- suggested the establishment of a procedure for direct,

trans-jurisdictional intervention (e.g., house-searches and examination of witness) to avoid the requirement of following the (unfamiliar and often tricky) procedures of another State, making the procedural standards those of the State seeking to take action. That proposal was hotly rejected by a large number of jurists who were concerned with the risk of a breach of the standards of due process of law that often attends such actions. The opponents viewed the proposed, trans-jurisdictional solution as a short-cut; it is better that the concerned person (lawyer or prosecutor) should acquaint him or herself with the rules of law applicable to the case. Unanimously, the participants encouraged the States to enforce existing institutions like the European Lawyers Network (7) and to ratify existing Conventions, like the Convention on Mutual Assistance in Criminal matters between the Member-States of the EU. (8) [9] The second topic of the workshop concerned the mutual recognition and execution of foreign judicial decisions. In this context, the participants had a very lively dispute about the necessity of the *ordre public*-control (public policy-control) in the Union. Some argued that it was no more compatible with the spirit of the European integration process to control decisions of other Member States, because the European Union is also founded on the idea of common values and every judicial system is supposed to have equal standing. On the other hand, some participants argued that the control of *ordre public* conformity was in favour of fundamental rights protection and that the abolition of this control would fatally lead to a diminution of standards of fundamental rights. If we follow the first argument, the *ordre public* control could be carried out, not by national jurisdictions, but by European institutions. This possibility presupposes an harmonisation of the notion of *ordre public*, and it would foolhardy to underestimate the difficulties connected with such an enterprise. But we have clearly observed, in the last decades, the gradual but certain development of a so-called European constitutional law, with rather high standards concerning fundamental rights, which should give confidence to the sceptics. [10] These reflections brought the workshop to its third topic which was the harmonisation of law in the Union. In this matter, the *Corpus Juris* project was treated in detail. In connection with this project, the establishment of a European prosecutor was mentioned. One of the welcomed side-effects of such an institution would be, that the European police organisations, Europol and OLAF (European Anti-Fraud Office), (9) would no longer act in a legal vacuum but could be integrated into a European judicial control. Other subjects of this discussion were the International Rogatory Commission and the European Warrant, which should be in place in the next months, to replace the cumbersome extradition procedure. [11] In the light of the productive First European Jurists' Forum, the next Forum, which will take place in 2003 in Athens, could be the continuation of a promising tradition.

(1) See for further reference H. Conrad/G. Dilcher/H.-J. Kurland (eds.), *Der Deutsche Juristentag: 1860-1994*, 1997.

(2) Official Journal of the European Communities 2000 C 346, p. 1.

(3) Decision no. 292/2000 of 30 November 2000, BJC 237 (2001), p. 46.

(4) The first Advocate General who referred to the Charter of Fundamental Rights was Tizzano in an opinion which was delivered on 8 February 2001, in case C-173/99 (BECTU v. Secretary of State for Trade of Industry).

(5) Bulletin Quotidien Europe No. 7918 (Thursday 8 March 2001), p. 7.

(6) See, e.g., Article 6 of the Charter of Fundamental Rights: "Everyone has the right to liberty and security of person."

(7) Created by joint action 98/428/JHA (29 June 1998) (Official Journal of the European Communities 1998 L 191, p. 4), adopted by the Council on the basis of Article K.3 TEU.

(8) Concluded in accordance to Article 34 TEU (Official Journal of the European Communities 2000 C 197, p. 3).

(9) Created by Decision 99/352/EC, ECSC, Euratom (Official Journal of the European Communities 1999 L 136, p. 20).