

First European Day of Lay Judges 11th May 2013 in Belfast

Dinner Speech at Parliament Buildings

by ENALJ President Hasso Lieber

Excellencies, Minister of Justice, Lord Chief Justice, Ms. Chair, dear Deirdre, Representatives of the European Associations of Honorary and Lay Judges, Ladies and Gentlemen, dear friends and colleagues,

one year ago in Brussels we

- proclaimed the European Charter of Lay Judges after three years of preparation,
- declared the 11th of May the „European Day of Lay Judges and Arbitrators”,
- and in August 2012 we founded the „European Network of the Associations of Honorary and Lay Judges”.

I thank our N. Irish friends very much, and also the representatives of Jurisdiction, Government and Parliament, for their hospitality to arrange the first anniversary of the European Day.

Why did we proclaim the Charter and found the Network?

The **first reason** is that all of us are convinced of participation of the people in each authority being the fundamental principal of democracy. Democracy means more than just participating in parliamentary and local elections. Democracy lives when people take part and assume their own responsibility also in matters of jurisdiction.

Participation in Jurisdiction always was the result of political struggle – for example in 1215 when the barons fought for their rights against King John.

Article 29 of the Magna Carta Libertatum that guarantees everybody to be condemned only by his peers is still in force.

Of course in that time the Great Charter dealt with the rights of the barons. But Baron Woolf, the former Lord Chief Justice of England and Wales, was right when he said in 2005, that the Magna Carta was „*first of a series of instruments that now are recognized as having a special constitutional status*”.

Several centuries later we have a similar development on the continent. French Revolution of 1789, Civil Revolution of 1848 in Vienna and Berlin- one of the **most important postulations** was the participation of the people in litigation.

The existing systems of participation are various. And we have no idea to harmonize the different systems in Europe. The European Charter of Lay Judges points that out in its Article 1. The different systems of participation are only various ways to realize the same target: just and reasonable decisions, taken according to the rules of law, but with a contribution of representatives of the people.

The political significance of this participation became very evident in the 20ies and 30ies of the last century, when fascist governments came into power in several European states. Franco in Spain in 1936 and Comas da Costa in Portugal in 1926 abolished the participation of lay judges completely.

In Germany all democratically elected lay judges („Schöffen” in criminal cases and „Handelsrichter” in chambers of commerce) were dismissed by the Hitler-regime two months after the Nazi-Party had come to power.

The **second main reason** for participation of lay judges is that they care for understandable and plausible trials and decisions. If a lay judge does not understand what is going on in a trial, the defendant or a party of a trade dispute doesn't understand either.

If you look at the states which transformed into democracy during the last two decades you get an imagination how important it is that a country's people is involved in the new democracy as well as in the reformation of legislation.

After World War II a new prime-age came up for the idea of participation. In 1966 Lord Devlin, one of the most famous judges in Britain, said: *„Each Jury Court is a small Parliament. I can't believe that one institution dies and the other survives. A despot would abolish parliament immediately and jury court next.”* The same voices were to be heard in Germany's new democracy.

And let me mention at this point of my speech that I was told by the N. Ireland lay magistrates that they are convinced that the N.IRISH LEGAL SYSTEM is the best of the world because of its dedicated professional judges and its well-trained lay people. Well, we can discuss all night long about the best legal system.

But I take this opinion as a proof that there is great understanding and harmony between lay and professional judges in N. Ireland about their different parts they play in jurisdiction.

But there are a few tendencies especially on the continent that pose a threat for lay participation.

One aspect is public finances. Because of increasing public debts policy's target was to reduce the costs of litigation. There were two means: to shorten lay participation and to cut legal means of the parties involved in law cases. But you can't cut democracy by economic reasons. If you would try to cut the competence of parliament (and in fact this is what we are doing in the nowadays Euro discussion) you will have great debates about the basic elements of democracy.

And that's what we should do in matters of lay judge participation. We have to demonstrate to the public that **their** rights in litigation is what we are talking about.

The **second argument** against lay judges in several countries nowadays is: *„Law is too complicated for ordinary people to deal with it.”* But this is exactly a circumstance which I state as a reason **for** participation of lay judges. You can't expect on one hand people to follow the rules of law and say on the other hand that people don't understand the rules. Lay participation acts as an indicator for understandable and acceptable law.

So, what is the European Network going to do?

First, we are preparing a **European Citizens Initiative** for support and development of lay judge participation in Europe. In August we shall have a meeting to organize this initiative under the guidance of our Spanish organization.

Second, in preparation of the European day in Belfast I asked all member organizations about the situation of lay judges in their country. I got a lot of answers and I came to know that in several states the future of lay judges is jeopardized. Just to give you an example. In Germany the percentage of trials with participation of „Schöffen“ (honorary judges) has run low to less than 20 %; in medium cases of crime even to less than 10 %.

And it seems to be the same In England and Wales. The lack of funds for the justice system has lead to the police being given more powers to deal with crimes outside of court. The problem now is the number of magistrates required has fallen. Five years ago there were some 30,000 magistrates in England and Wales. Now the number has fallen to 24,000 and the magistrate’s association expects it to fall even further to 20,000.

We must analyze this development and find a common strategy.

Third, we must popularize lay participation in litigation. A lot of people do not know much about their legal system and how to bring people’s influence to bear. To me this seems to be a bigger problem in countries under the influence of Roman law than in common law countries.

As you see, there is a lot of food for thought and for political activities; so I don’t worry about the next European Days of Honorary and Lay Judges.

Let me say again „Thank you” to our hosts and to the Minister of Justice and the Lord Chief Justice to participate in our meeting. I am looking forward to fructuous conversations this evening and a good development of lay judges in future. I hope to have the representatives of politics and jurisdiction on our side. From the point of view of honorary judges promise a trustful cooperation.

So let me take my glass and wish you all the best in the future and always the right decision.

To your health.