

**6TH CONGRESS OF THE EUROPEAN WOMEN LAWYERS ASSOCIATION
BUDAPEST, 19-20 MAY 2006**

**THE FUTURE OF EUROPEAN LAW
FROM WOMEN LAWYERS' PERSPECTIVE**

OPENING OF THE CONGRESS

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First of all I would like to thank the organisers of this congress very warmly for having honoured me with the invitation to this congress and the opportunity to give one of three opening statements. This congress highlights the importance of EWLA's novel initiative to look at European law from a female perspective. The congress is opened by three women, who, as I have noticed, have quite different involvements in the context of Community law. Ms. Kinga Gál and Ms. Katalin Lévai as members of the European Parliament, are involved in particular in the genesis of Community legislation, while an Advocate General at the European Court of Justice (ECJ) is confronted with legal aspects of the transposition, application and enforcement of Community law. As member of the ECJ, each of the eight Advocate Generals proposes to the judges, in open court, a legal solution to the cases for which he/she is responsible. This opinion is given in complete impartiality and independence to the Court.

Thus, as part of my function I am often led to question Community law to determine the rationale that underpins it. Gender has been at issue in the development of Community law for a long time, in particular as far as gender equality is concerned. But if one admits the possibility of a distinctively feminine perspective on Community law, at least two main approaches seem possible: a structural and a substantive approach.

Structural approach

The making, the transposition and the enforcement of Community law are complex processes that involve many different actors. It appears therefore very ambitious to determine precisely the influence women could have in this process. Nevertheless, as a matter of fact, an increasing number of women are involved in this process. We have indeed witnessed an increase of female MEPs, female Commissioners and at present close to half of the civil servants of the public service of the European Union are women.

What about the ECJ? Although the court has championed the cause of equal treatment of women in its judgements, the Court itself has for a long time consisted almost exclusively of male members. The first woman ever appointed to the ECJ was Simone Rozès who became Advocate General in 1981. The first female judge at the ECJ was the Irish Fidelma O'Kelly Macken, appointed in 1999, who seemed to have opened more widely the doors to the appointment of women to Community Courts, with Ninon Colneric from Germany following shortly after. In 1995, two women, Virpi Tiili from Finland and Pernilla Lindh from Sweden, had already been appointed to the Court of First Instance (CFI). Today, at the ECJ, we are in presence of 2 female judges and 3 female Advocate Generals, out of a total of 33 members. The CFI seems somewhat more balanced with 9 female judges out of a total of 25 judges.

But does the presence of female members at the ECJ and the CFI make any difference? Let me try to give a strictly personal answer. Given that a wide array of backgrounds should be ensured among the members of courts at a European or international level, Member States could also contribute to ensuring a certain representation of the plurality of our "European" society by being more open to appoint women to the ECJ.

Substantive approach

Already the Treaty of Rome enshrined the principle that men and women should receive equal pay for equal work in what has now become Article 141 EC. This provision has turned into an increasingly powerful tool for gender equality, as it was shown by the groundbreaking *Defrenne* case which, in 1976, opened up new horizons for the enforcement of gender equality.

The Court has since then developed a voluminous case-law on gender discrimination that, for a long time, focused on questions related to employment. More recently, the question of gender has become increasingly relevant in wider areas of Community law, such as free movement of persons. In this respect the case *Martinez Sala*¹ opened the way for gender-awareness in the context of citizenship. The Court held that Mrs. Martinez Sala, a long term resident in Germany, could rely upon the non-discrimination principle of Article 12 EC to claim equal access to a German child-raising benefit for her newborn second child. In this case, the Court moved away from an entitlement linked to employment to an entitlement linked to the concept of citizenship. This clearly facilitates women's access to such benefits.

In this context it is not surprising that the ECJ has, in recent times, considered non-discrimination on grounds of sex as fundamental right², which thus goes far beyond its economic origins. This has been confirmed by clear references in the Charter of Fundamental Rights³ and the Treaty establishing a Constitution for Europe⁴.

On a legislative level, there have also been, in the last years, significant developments moving away from the initial connections with employment. Directive 2004/113/EC aims at extending the principle of equal treatment of men and women to the field of access to and the supply of goods and services⁵. An important evolution is also manifested in the Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings⁶ and I am pleased to see that a workshop is devoted to this field during the congress.

More generally so-called gender-mainstreaming is entering all areas of European policy and law-making. In the field of external relations of the European Union for instance, efforts are made to integrate the rights of women and the principle of equality between men and women in programmes, activities and policies of the EU concerning third countries, such as the Euro-Mediterranean partnership or the ACP-EU Partnership agreement signed in Cotonou.

¹ Case C-85/96, *Martinez Sala*, [1998] ECR I-2691.

² Case 50/96, *Schröder* [2000] ECR-I743.

³ Article 21(1) and 23

⁴ Article II-81 (1) and II-83

⁵ Directive 2004/113/EC (OJ 2004 L373/37) implementing the principle of equality between men and women in access to and supply of goods and services.

⁶ Directive 2004/81/EC (OJ 2004 L 261/19) on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

Last but not least, the EC Treaty has been updated, in order to be in phase with the progress of gender equality in the jurisprudence of the Court and in secondary legislation. Thus the Treaty of Amsterdam which entered into force in 1999, notably introduced provisions relating to gender-mainstreaming⁷ and strengthened the case for positive action in particular in the field of employment⁸.

But it is also important to keep in mind that there are certain limitations to the role law in general can play to achieve equality between man and women in society, and Community law is even more limited in its effects as it remains the law of an organisation with limited competences.

Concluding remarks

Let me conclude by emphasising that Community law is increasingly shaped and applied by women and has to a significant extent incorporated the specificity of women's situation. Whether there is an interaction remains however difficult to evaluate.

Thus, I would like to wish EWLA a successful congress and a very fruitful continuation of its activities to the benefit of all women in the European Union.

⁷ Article 3 EC.

⁸ Article 141 EC. The changes to this provision are usually seen as linked to the ECJ's judgement in *Kalanke* (Case C-450/93, [1995] ECR I-03051).