



ETUCE Seminar for Teachers' Organisations Legal Experts

Brussels, 10-11 March 2003

Report

**ETUCE Seminar for Teachers' Organisations Legal Experts
Brussels, 10-11 March 2003**

Conference report

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Foreword

Teachers' organizations have a crucial role within the building of a European-wide learning society and the development of a cohesive employment environment for teachers. This often includes legal questions and aspects to the development and implementation of the EU and national policies to create such environments. However, the rapid evolution of EU (social) legislation and action of importance to the education has not always been fully matched by commensurate understanding, co-operation and participation by teachers' organizations at either national or European level.

The main purposes of this seminar was therefore, on the one hand, to raise awareness and stimulate dialogue between teachers' organizations, and in particular their legal officers, from the EU/EEA member states and EU candidate countries concerning the role of EU legislation and action in the area of education including implementation at the national and European levels, and on the other hand, to improve exchange of information concerning matters of Community Law and action in the field of social affairs of relevance to education, training and research at both European and national level. Furthermore, the intention was also to encourage and foster participation of these legal officers in the development of employment and education initiatives at EU level and in local, regional and national action taken within the framework of European cooperation on education policy issues.

From the wide range of issues of concern to the education sector, the project preparatory committee decided to orient this first meeting around two issues: the recognition of professional qualifications and the atypical work relationships. In this way the discussions could be focussed on both the legal issues related to the development and management of education systems and on those related to the individual rights and duties of employees in education.

The results of the discussions at this seminar can, as shown by this report, be considered as fruitful and extremely fascinating. Firstly, the participants gained a better insight in the general and specific impact EU regulations and policies might have for their sector and the people they represent. Secondly, it became clear that irrespectively of their country of origin the participants were confronted with similar but also different problems in the implementation of the EU measures in their national, and local context.

All this led the ETUCE to envisage the pursuit of encounters like this seminar. More in particular thought will be given to further facilitate virtual and physical networking of the legal officers of the teachers' unions affiliated to the ETUCE. To stimulate this networking, this report will be widely distributed by the ETUCE but also via the ETUC trade union legal experts network NETLEX.

Martin Rømer
ETUCE General Secretary



ETUCE Seminar, Brussels, 10-11 March 2003
European Seminar for Teachers' Organisations' Lawyers and Legal Experts

Programme:

Monday 10 March

| | |
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| 09.30 - 10.00 | Opening of the Seminar Objectives of the Seminar ETUCE General Secretary Martin Rømer |
| 10.00 - 11.00 | Key note speech I: <i>"EU Labour Law and its Possible Link to the Education Sector"</i> Ms Eva Kolehmainen European Commission – DG "Employment and Social Affairs" |
| 11.00- 11.15 | Break |
| 11.15 - 12.30 | Questions and discussion |
| 12.30 - 14.00 | Lunch |
| 14.00 - 14.45 | Key note speech II: <i>"Recognition of Professional Qualifications"</i> Mr. Ernst Erik EHNMARK, Member of the Economic and Social Committee |
| 14.45 - 15. 15 | Questions and discussion |
| 15.15 - 15.30 | Break |
| 15.30 - 16.30 | Working Groups |
| 16.30 - 17.30 | Reports from the day's working groups |
| 19.00 | Joint Seminar Dinner offered by ETUCE |

Tuesday 11 March

| | |
|---------------|---|
| 09.00 - 09.45 | <i>"EU Law and atypical work"</i> Professor Brian Bercusson, Kings College, London, UK |
| 09.45 - 10.15 | Questions and discussion |
| 10.15 - 10.30 | Break |
| 10.30 - 11.30 | Working Groups |
| 11.30 - 12.00 | Group reports |
| 12.00 - 13.30 | Lunch |
| 13.30 -14.00 | <i>"Outline of NETLEX"</i> Mr Stefan Clauwaert, ETUI, ETUC NETLEX Coordinator <i>Mr Jan Willem Goudriaan, Deputy General Secretary of EPSU (European Federation of Public Service Unions)</i> |
| 14.00 - 15.30 | Future legal areas of work for ETUCE |
| 15.30 - 16.00 | Evaluation and Closing of the Seminar ETUCE General Secretary Martin Rømer |

Proceedings of the Conference

Monday 10 March

Introduction by Martin Rømer, ETUCE General Secretary

Martin Rømer welcomed all participants to the seminar and hoped this could be the beginning of a Legal Experts Network within ETUCE. He said that some might wonder why ETUCE took initiative to this seminar as no really Community Legal Actions are to be found in the Treaty concerning education. But first of all it has to be remembered that the very tight political cooperation between education Ministers very often has as a result new national legal frameworks and reforms. Secondly because teachers as other public employees are subject to the general Community legislation on social and employment matters, e.g. directives on mobility.

In this case a lot of connecting problems have to be solved like the right and possibilities for social benefits including pensions. The need to discuss national implementations of directives seems obvious and could strengthen the organisations role in relation to their Governments.

Then it should not be forgotten that organisations could benefit from a closer corporation on the different legal matters, e.g. in cases by advising members moving to another country.

To create a network is not simple, and Martin Rømer pointed out the fact that it took several years to create the ETUC NetLex. ETUCE has as part of the Dialog ON project already developed 3 Networks on Quality in Education, Higher Education and Research and a Network for organisations Chief Negotiators. A very important experience has been the need to start with physical meetings to discuss the future possibilities for the Network and set objectives supported by everybody. These Networks has been set-up on bases of using the latest technology. This has been so far a success because everybody can participate in the discussions and follow the developments in the Network. To illustrate the possibilities the seminar will give a short insight on how it works.

Martin Rømer pointed out that if a Legal Experts Network should be a reality it would depend very much on the discussions in this seminar. So if the reaction would be positive he would take the possible development of a new Network to the ETUCE Executive Board in May and consider how to finance the start of the Network.

Martin Rømer thanked very much the small preparatory group for the work so far and hoped everybody would contribute to the discussions the next 2 days

Key note speech 1 : “Community labour law”- Eva Kohlemainen (European Commission – DG Employment and Social Affairs – Unit D/3)

Mrs. Kohlemainen presented the general framework of existing EU labour law. Starting off by explaining the legal basis for Community labour law as prescribed by the Treaty of Nice (article 137 and following), she then focused on the general features of this branch of EU law. Furthermore she highlighted more in detail the three

main regulatory features being information and consultation, equal treatment and non-discrimination, and working time. She also indicated that there are several other directives not falling within these categories, such as in particular the EU framework agreements concluded within the framework of the EU social dialogue and as they are incorporated in Directives (e.g. agreements on parental leave, part-time work and fixed-term contracts) For each of these, she provide a more detailed insight in the objectives and principles of these directives as they may have a general but also specific impact in the education sector. She ended the overview on EU labour law directives by providing some more information on the insolvency directive as well as on the transfer of undertakings directive and the posting of workers directive. To conclude, she provided an overview on pending proposals for directives as well as ongoing consultations with the EU social partners in the framework of the EU social dialogue. (e.g. stress at work, aspects of corporate social responsibility of enterprises, etc.).



From the subsequent discussion it became amongst others clear that, taking the example of the fixed-term work Directive, in most cases EU directives do not have much impact in general or, specifically in the education sector, mainly due to the fact that EU directives are providing minimum standards which could be described as the lowest common denominator. The fact that often national systems do already provide higher standards, implementation is not or only in a limited way necessary.

One additional problem which was identified is the specific characteristic of having in the education sector both private and public employers whereby EU directives are not always fully adjusted to this characteristic.

Key note speech II: “Recognition of Professional Qualifications” - Mr. Ernst Erik Ehnmark (ECOSOC)

In the area of recognition of professional qualifications, Mr Ehnmark referred to the existing “sectoral” directives such as for doctors and dentists, which worked well despite the enormous administration behind it. Nevertheless they were in the 1990’s regarded as insufficient in particular in relation to promoting mobility and also due to rapid changes in higher education programmes.

The current proposal under discussion intends to codify the existing sectoral directives and to decrease the number of pages of *acquis communautaire* in this area considerably. The overriding principle will however remain the safeguarding of quality.

Some of the interesting aspects of this new proposal, according to Mr. Ehnmark, include amongst others:

- The introduction of a registration authority where citizens can check for the real qualifications of the expert in question,
- The creation of a “common platform”, i.e. giving the EU professional organisations of the different sectors a more active role in identifying the

applicable criteria. The question still to be discussed now is however which organisations could be considered “representative” to form this platform, and

- The rather negative proposition to abolish the existing sectoral committees and to create a new body which would only consist of governmental representatives thereby excluding the professional organisations.



It was clear to Mr. Ehnmark that no social partner involvement in the new consultative committee could not be acceptable for ECOSOC which urges for such involvement both in the implementation and the processing of the Directive. A possible solution, to him, might be the creation of an ad hoc structure which albeit does not guarantee that meetings of this structure will effectively take place.

“Working groups session I”

To streamline the discussion in the three working groups, the following questions were put to the participants:

- 1) *How far is European law useful to you in extending rights to teachers in your country? Have you had cause to use European law in the courts or in collective bargaining negotiations?*
- 2) *In your country what will be the impact of easier mobility between member states?*
- 3) *Are there any particular areas, which you think could be usefully developed in existing EU law or are there new areas that need development?*

Regarding the first question, a positive example was reported from **Germany** indicating that by using the EU Working Time Directive (93/104/EC) and in particular a European Court of Justice judgment regarding on call working time of Spanish doctors (C-303/98 – SIMAP), a case was recently won before the German Courts. In its SIMAP-judgment the ECJ judged that being “on call” at the premises of the employer must be considered as working time. In the German case the same principles were argued successfully for those employed in independent and special schools who were required to be on call outside working hours.

Also for **Germany**, it became clear during the discussions that there existed a possibility of using the EU Framework Directive 2000/78/EC which prohibits age discrimination as well as discrimination on the grounds of religion, sexual orientation and disability. Teachers are employed as civil servants in Germany. It is the practice to issue lifetime contracts, but for those over the age of 35 or 40 (the age limit is dependent on where you live) a lifetime contract is not issued. This was considered a clear discrimination based on age. As for the non-discrimination grounds of race and religion, the directive was, in any case in **Norway**, considered an interesting tool to help developing national law, although it was not expected to have a specific impact on education. On the other hand, in relation to age discrimination, it was

generally felt that the new directive would have an impact on education given the demographic profile of the profession in many EU countries.

Another approach of using EU legislation in the national context can be witnessed in the **UK**. Successive UK governments have tended to implement EU Directives incorrectly and therefore trades unions in the UK have used litigation against the Government to ensure their proper implementation. The main reason for using EU law and precedential ECJ judgements in litigation is because of the decline in national and local collective bargaining and collective agreement arrangements.

In **England and Wales** discussions show that EU legislation has a significant influence on working conditions, particularly on the issues of part-time and fixed-term work. EU directives have helped to improve working conditions of atypical workers and to reduce sex discrimination in the education sector. Teachers' unions also informed the Government on the non-respect of legal working hours and on the non-acceptable workload. They launch a national document/action for support.

Also in the EU candidate countries a potential field of use of EU law in the domestic context is present. For example, it was highlighted that in the **Czech Republic**, trade unions were facing problems in the sense that the head-teachers had huge powers to decide a proportion of a teacher's salary. Only, there are no criteria for the allocation of this pay and it is thus at the head-teacher's complete discretion to decided upon the proportion of the salary. This situation was considered to be in violation with the EU Equal Treatment and Equal Pay Directives (2000/78/EC and 75/111EC), which could be used to challenge this practice.



On the other hand, apparently in the **Netherlands, Norway and Sweden**, it was reported that the incorporation of European law into national law does not create a major added value. Given the strong history in these countries of collective bargaining and agreement with the government and employers, a situation has grown whereby the national law is better and more protective than that provided by EU Directives.

There were differing views on the local determination of salary. Delegates from the UK were not in favour of this but it is preferred in Sweden and Norway.

It was clear from the discussion that there were two very different approaches being adopted by the countries represented at the seminar when seeking to implement European Directives. This appeared to be largely dictated by different systems of industrial relations and varying levels of State intervention. On the continent, there exists a historical role for national bargaining and collective agreements being achieved through discussion and negotiation between social partnerships, i.e. trades unions and employers' organisations. (e.g. Sweden where EU directives are implemented directly via national collective bargaining, or Holland where for instance collective agreements, which always value the length of service of and the continuity of employment for workers, have status of law).

By contrast the UK approach was characterised by the implementation of directives through law and regulation and not through national collective agreement or collective bargaining. The UK had also gained a reputation for minimum compliance with European Directives. It was felt that the UK approach compelled trades unions towards litigation, as UK Governments of different political complexions did not accept the legitimacy of creating law through social partnership. UK trade unions very often had to seek to extend domestic employment protection through EU law but this invariably had to be through the judicial route. As a result these trade unions had brought issues such as the employees rights in relation to transfers of undertakings, equality and working time issues to European Court with a great degree of success.

This does however not mean that "on the continent" dispute resolution in its various forms is not used. In the Netherlands for instance it are the ministers and unions which firstly try to resolve matters without recourse to law or via special committees such as the Commission of Equality. Still, several cases do go to civil or specialised labour courts as the examples in the Netherlands (e.g. discrimination cases involving migrant workers and refugees), Slovenia and Sweden (where one can address a final appeal to the Ombudsman who has a power to overturn the decision of the labour courts) show.

Given the fact that EU directives only lay down minimum standards, a concern was however expressed how these "common lowest denominators" could in the future help to improve workers rights. In fact, in some EU candidate countries, such as Slovenia, it was even feared that various Governments will use accession to EU to deregulate labour law throughout Central and Eastern Europe and thereby –albeit falsely -argue that the existing protection can be lowered to the standards of the EU. It was in any case clear that some deregulation trends in one country of the region would immediately create a perverse spill-over effect in the other countries.

Furthermore, according to the repartition of competences between member states and the European Union, education is a national competence. This element strengthens the fact that EU legislation on education has little direct or a marginal impact on the education sector, except in vocational training issues.

By way of conclusion, all participants showed a clear interest to be more informed about European legislation and case law on workforce mobility, but also on general European labour and social law

Regarding the question on mobility of teachers, on the whole, the participants could not identify any significant movement which would cause problems. Except apparently in Poland where trade unions fear the outflow of the most qualified teachers to countries with higher salaries, not even in the EU candidate countries a large exodus of teachers is expected whereby the language barrier apparently constitutes the main obstacle.

Several participants pointed out that indeed they seldom have dealt with mobility during their career, because teachers are mostly bound to their home country and national education systems. At national level, access to jobs in the education sector is mostly regulated and in some cases accessible only to nationals. In most EU

member states education is a part of the public sector, whereas in the Netherlands only 20% of the education sector is under public authority. Status and working conditions are therefore generally structured differently as in the private sector.

A first positive element that was highlighted was that in the majority of countries there exist systems in place to assist teachers from other countries, to improve their qualifications where necessary in order for them to be comparable with the country standard.

Secondly, regarding the access to seniority and social rights such as pensions rights in case of geographical mobility of teachers in Europe, it was felt that the EU regulations and policies were of major added value also for teachers moving around in the EU.

Regarding the third question in which areas further development of EU regulation and policies was considered necessary, the following areas were identified:

- More positive assistance/law from the EU to workers transferring to new occupations on learning new skills.
- The development of EU law on stress at work, including management bullying and also pupil bullying of teachers.
- Further development of the EU model of health and safety legislation, which is of major concern but also importance for the EU candidate countries
- The insecurity of employment of university lecturers in a number of countries and the wide difference in the number of hours they were required to work;
- The variation in working hours for teachers, which can vary from sector to sector; or depending on the age
- The definition of working time for teachers
- The loose and unregulated use of 'cover' teachers in some countries – possibly ripe for the development of teacher supply agencies;
- The wide difference in the EU member states of reporting the criminal convictions of teachers to employers and its impact on the free movement of teachers
- The appointment of unqualified teachers in the member states. The majority of delegates reported that usually such appointments were for a fixed term.



Regarding mutual recognition of Professional Qualifications, several participants highlighted the positive impact of EU legislation on the recognition of qualifications, whereby national restrictions still exist concerning for example the request of good knowledge of the host country language, the procedure of recognition being suspended until the applicant passes successfully the examination. Although, as already mentioned, overall the participants did not appear to believe that there would be much movement of teachers either in or out of member states, the EU candidate countries were anxious over

any criteria that may be adopted by member states, which could prevent free movement of professionals within the EU. Much would depend on whether criteria set are restrictive or otherwise. It was recognised that any criteria adopted would need to be linked to the regulation of employment standards so as to avoid any diminution of existing labour law protection.

Tuesday 11 March

“EU law and atypical work” – Prof Brian Bercusson, Kings College London, UK

As central directives in the area of atypical work, Prof. Bercusson mainly highlighted four of them: the working time directive, the part-time work directive, the fixed-term work directive and the currently pending proposal for a directive on temporary agency work.

During his presentation he mainly highlighted the deficiencies of these directives in relation to their application to the education sector, and this mainly due to the vague terms used in it, such as working time (does this include time while teachers are correcting essays?), the lack of an EU notion of worker (and thus the link to self-employed not being clear in most cases), etc..

During the discussion, it became clear that the participants had gained another insight of the possible application of these directives to their sector and had to admit that one might have underestimated the real possible impact they might have (had).

“Working groups session II”

While discussing the matters raised by Professor Bercusson's presentation, it showed that, again, there were stark differences in the impact of legal provisions and the labour market situation on the current issues facing the education sector in different countries.



In relation to issues of working time, common difficulties arise concerning the definition and amount of working time whereby in most cases, working time is not realistically fixed so that extra hours are necessary to overcome the workload. It was highlighted that in the **UK**, teachers had a system of annualized hours, but with additional unlimited hours also required under the contract of employment. The annualized figure corresponded to the hours called “directed time” during which the teacher could be directed by the head-teacher to carry out teaching and other professional duties. The additional time was required to carry out any further necessary professional duties such as further planning, preparation and marking. As the additional time was unlimited, it was not unusual to find teachers working more than 50 hours per week during term time. The application of the Working Time directive in order to limit the working week was difficult in such a situation due to the reference period provisions. Because the average working week was calculated over a 17-week reference period, holiday periods would also be included so that the average would be far less than the average hours worked during term time alone.

This situation was counterpoised with that of the **Netherlands and Sweden**. In the **Netherlands** there was a fixed annualized figure of 1660 hours of work. This was regulated by collective agreement. In **Sweden**, an annualized figure of 1300 hours had been agreed, again by collective agreement. However both countries were

suffering shortages within the teaching profession. In Sweden, teachers could agree to work additional hours in response to staff shortages, and would be paid overtime.

The working groups also discussed the use of fixed term contracts, including daily contracts, since in most countries the recourse to fixed-term contracts in the education sector is high. Again this was a particular problem in the **UK** with some teachers being employed for long periods of time on an insecure basis. Due to existing legislation, a similar problem could not occur in the **Netherlands** due to the rule that a worker would become a permanent employee after three fixed term contracts. In **France** the recourse to atypical employment situations for young workers in the education sector is growing. In the public education sector, a school for a district centralizes recruitment of teachers without tenure and other staff. This system can be assimilated to a temporary work agency one. In **Portugal**, the recourse to precarious employment contracts is very high and concerns even up to 70% of university teachers. In addition, the extended possibility to have recourse to fixed-term employment, as it was recently introduced, will tend to reduce the number of civil servants in the education sector. In the **Netherlands and Sweden**, recourse to atypical employment in the education sector is usual and the sectoral collective bargained framework provides good protection for these workers. However in the Swedish high education, an investigation by the Swedish trade union SULF shows that few teachers or professors are offered an indefinite-term work contract after graduated. In **Poland**, the education sector is characterized by little or non-existing recourse to atypical employment in the primary and secondary levels as well as for university careers.

A specific problem, in particular in the **UK**, seems to be the issue of temporary employment agencies operating in the education sector. Over the past decade, teachers were more and more becoming employees of agencies or even being treated as self employed, thereby not receiving the same pay and terms of employment as directly employed colleagues. Many teachers were paid less than the national statutory rate by this device, and had no occupational pension entitlement.

A growing problem, in particular in **Sweden**, is the difficulty to attract and keep teachers because of non-competitive wages. The outflow of Swedish teachers in others EU member states is difficult to stop and the Swedish government set up tax law incentives for foreign teachers to work in Sweden. Furthermore in the high education a study of the SULF showed the degradation of working conditions due to reductions of government allocations. This leads to an increase of the workload and therefore of overtime and sick leave, but also leads to more conflicts at the work place.

All participants noted the increasing number of teachers facing 'burn out' and stress injuries. In the **Netherlands and Sweden**, the main reason for this seemed to be a lack of professional autonomy and an inability to regulate working time as an important cause of this. A similar situation was highlighted for the **UK**, where in addition pupil behaviour problems forms an additional factor causing stress. Other health and safety problems identified were voice loss and hearing problems.

By way of conclusion, the participants noted that sectoral agreements at European level were possible on the issue of working time and that it would be of value, in

particular to UK teachers, to explore whether the education sector might benefit from consideration of a sectoral agreement.

“Outline of NETLEX” – Stefan Clauwaert (ETUC/ETUI NETLEX Coordinator)

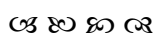
As one of the underlying objectives of this meeting was to discover whether there existed common ground to establish in the future a operational network of legal experts in the education sector, Stefan Clauwaert presented the ETUC/ETUI trade union legal experts NETLEX as one possible “structure” of further networking and cooperation between legal experts and lawyers in the education sector.



Starting off with a historical overview of the establishment and development of the network, he stressed the need that any network should be beneficial for all parties. On the one hand, the European confederation should be able to rely on the expertise of the national members of the network, whereas the latter should be able amongst others to retain information and advice on important features and trends on the EU level which might impact their national system in one way or the other. Therefore the links between European confederation and national experts (and vice versa) should be fed with relevant information on issues at stake and/or of interest to the education sector in an almost continuous way in order to create an added value on both sides. Stefan Clauwaert provided numerous examples, based on the experiences within NETLEX, on how such contacts and cooperation could be nurtured and developed. He concluded with some prospects for the future of NETLEX whereby the need to sectorialise this general trade union network was considered crucial. Indeed bilateral cooperation with comparable networks specific to the different sectors of the economy could not only be beneficial for NETLEX but as well for these sectoral networks given the increased possibility for trade union lawyers to learn to know each other and to share experiences. An outline of the presentation can be found in the annexes to this report.

“Future legal areas of work for ETUCE”

During this “round table session” it became clear from the presentations of all the participants that this event was highly appreciated whereby everybody expressed the hope that the continuation of it – in its most appropriate format - would be envisaged. As main positive element was indicated the possibility to meet with foreign colleagues and discussing with them not only the different national systems, of which certain aspects could serve as a “benchmark” to be reached in ones own country, but also EU developments which will impact all of them in a same or different way.



Annex I: List of Participants

| Name | Country | Organisation |
|-------------------------------------|----------------|---------------------|
| Jean Biskup | Belgium | COC |
| Kris Van Segbroeck | Belgium | COC |
| Jiří Valenta | Czech Republic | CMOS PS |
| Francis Berguin | France | SNES-FSU |
| Volker Busch | Germany | GEW |
| Frans Brekelmans | Netherlands | Aob |
| Frans Lathouwers | Netherlands | Aob |
| Jørgen Wille Mathiassen | Norway | Utdanningsforbundet |
| Ryszard Mosakowski | Poland | NSSE "Solidarnosz" |
| Maria de Fatima Geraldo Costa Anjos | Portugal | FENPROF |
| Joao Luis Madeira Lopes | Portugal | SPGL |
| Gordana Potrata | Slovenia | ESTUS |
| Joaquin Chavarri Andres | Spain | FETE-UGT |
| Kristina Rollbäck | Sweden | LR |
| Håkan Leif | Sweden | Läraryrbundet |
| Thomas Kihlberg | Sweden | SULF |
| Mary Howard | UK | NASUWT |
| James Quigley | UK | NASUWT |
| Michael Scott | UK | NATFHE |
| Sarah Morgan | UK | NUT |
| Amanda Brown | UK | NUT |

| | | |
|--------------------|-------|-----|
| Graham Clayton | UK | NUT |
| Sandra Bennett | UK | NUT |
| Isabelle Schömann | ETUI | |
| Wiebke Düvel | ETUI | |
| George Vansweevelt | ETUCE | |

Annex II: Outline of the presentation by Stefan Clauwaert

“The ETUC Trade Union Legal Experts Network”

“NETLEX”

History

| | |
|------------|---|
| 1994: | 1 st meeting of a legal network |
| 1995: | 2 nd meeting of a legal network |
| 1996: | appointment of a NETLEX Coordinator |
| 1996-2003: | constant evolution in the membership and activities of the network |
| 2002: | Two new colleagues and the establishment of the ETUC Legal Coordination Group |

Today

More than 120 trade union lawyers as contact persons

Representing all EU, EEA and EU candidate countries

Connections with trade union lawyers
in the Balkan and Euromed-region

First contacts with trade union lawyers
from US and Mercosur

Main functions

- To assist the ETUC Secretariat and the ETUC Executive and Standing Committees in the legal aspects of the policy priorities
- To foster the contacts between the legal experts of the member organisations in order to monitor and follow up the implications of and the new developments in EC litigation and legislation

Relations with ETUC

- Participation in the ETUC Labour Standards Committee
- Participation where relevant in other ETUC Standing Committees
- Participation in the EU social dialogue (fixed-term work, temporary agency work and telework)
- Representing ETUC in the Council of Europe Social Charter control bodies

Relations towards the members of NETLEX

- Helpdesk for information and advice on comparative and EU labour law
- Information distribution by mail and internet (NETLEX website)
- Legal reports based on questionnaires and literature review
 - State-of-play reports:
 - Fixed-term work, agency work, international strike, etc.
 - Implementation reports
 - Parental leave, part-time work, fixed-term work, telework
- NETLEX Annual Conference
- Direct contacts between members

Working Areas

- Litigation and transposition
- Employment contract aspects
- Fundamental social and trade union rights
- What about other law branches? Health and safety, commercial and competition law, social security law, etc.

Specific features

- Baltic Labour Law Project
- Balkan NETLEX
- Euromed
- ETUI network on transnational trade union rights

The Future

- Optimise the working methods
- Intensify the use of modern technologies
- Intensify training for the members

And then:

- Regionalise
- Sectorialise
- Generalise

Annex III : Questionnaire and synthesis of the replies to the questionnaire

Seminar for lawyers/legal experts of the national teachers' organisations.

(Brussels, 10 & 11 March 2003)

Questionnaire

This seminar is the result of an initiative by education trade union lawyers themselves to bring together lawyers working for education sector trade unions across Europe.

A number of experts have been invited to address the seminar participants on issues relating to the impact and influence of European Union law. The seminar will allow for discussion and exchange of information on the experience in each member state as well as an opportunity to meet on an informal basis.

In addition there will be a presentation by the Coordinator of the ETUC Trade Union Legal Experts Network (NETLEX) which provides a forum for information-sharing and advice to European trade union affiliates. We hope that this seminar may prove a starting point for a similar network within the education sector.

The seminar will focus on two areas of current interest: recognition of professional qualifications and atypical working arrangements.

We would like to encourage you to contribute to the issues for discussion by informing us of particular areas of interest and concern within these topics.

We invite you to produce a short paper (maximum 1000 words) on any of these issues to contribute to the seminar.

- 1 What proportion of your membership work
 - a) on a part time basis?
 - b) on a fixed term contract?
 - c) for an agency?

- 2 Are there gender or other grounds for the division of the teacher workforce into these categories?

- 3 Are there any particular problems experienced by teachers in these groups as a result of the national context?

- 4 Have any difficulties been experienced regarding the recognition of professional qualifications gained in other member states?

- 5 Has European Union law been of use, or is it likely to be of use in promoting these teachers rights in the national situation?

- 6 Are there other issues and topics of national concern to you which you believe can be valuably addressed in a European-wide context?
- 7 How might a Europe-wide network for information-sharing and co-operation on casework assist your work?

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Synthesis of the replies to the questionnaire

Six trade unions of the education sector sent their replies to the questionnaire: Dutch AOb, Polish NSSE Solidarnosc, UK National Association of Teachers in Further and Higher Education (NATFHE), Portuguese FENPROF and SPGL, the Swedish Association of University Teachers (SULF) and the Education and Scientific Workers Union of Slovenia (ESTUS). Most of them replied to a selection of questions, whereas others sent us reports or working documents, in which we could find complementary information. As the replies to the questionnaire cannot be published, this synthesis report will allow the diffusion of the information received.

Question 1: what proportion of your membership work in atypical employment relationship?

With the exception of Poland, where most of the university teachers are appointed for an indefinite period of time, atypical employment is a common feature in most represented countries. Atypical work can be found in all level of the education sectors and was more likely to be found amongst the less qualified staff than more qualified ones . Atypical employment is a widespread characteristic in university research centres or for doctoral students.

In the UK, approximately 20% of the union's membership is employed on a less than full time basis. In Slovenia 14,7% of the teachers in the primary are employed for a determinate period and 17,8% in the secondary. One reason of the development of atypical employment may be the falling birth-rate that leads to the decrease of pupils/students in school and therefore the reduction of the need of educational staff. Furthermore, Slovenian legal provisions do not allow employing on a open-ended contract a person with inappropriate qualification for a given job. In Sweden 20% of the SULF are employed on a part time basis, either on an hourly basis or in different kinds of specialities, often employed as visiting professors. The approximate duration of a fixed-term contract is between six to twelve months. 45% of the members of SULF work in temporary contracts, whereby almost half of them are doctoral students or research assistants. In Sweden, the increase of the proportion of high qualified people leads universities to offer permanent work contracts to teachers with PhD degrees.

Question 2: Are there gender or other grounds for the division of the teacher workforce into those categories?

As a whole the teaching is in the UK more female than male. A higher proportion of women work part-time than full time, the proportion of women in senior positions is lower than for men. In particular, there are fewer senior female academics, and those earn statistically less than their male counterparts. No statistic or general information are available according to the Polish report, but the complexity of the

polish promotion system in higher education makes it difficult for women to get the position of ordinary professor (which is the highest in the Polish system of higher education).

Question 3: Are there any particular problems experienced by teachers in these groups as a result of the national context?

In the UK, until the introduction of the part time workers regulation and the fixed term employees regulations, as implementation regulations of the corresponding European directives, women working part-time or on a fixed term contract were obliged to establish direct or indirect sex discrimination in order to challenge unfair and discriminatory working practices. These practices include lower wages, reduced benefits such as entitlement to sick pay, reduced access to staff development and training, fewer facilities at work (for example no private working space allowed in the staff room). Those who have been required to become agency workers have lost many statutory employment rights and their entitlement to join the national pension scheme for teachers.

Question 4: Have any difficulties been experienced regarding the recognition of professional qualifications gained in other member states?

According to the NATFHE, it is not thought that European professional qualifications cause a particular impediment to employment in the UK. No data was available on this issue in Poland.

Question 5: Has the European Union law been for us, or is it likely to be of use in promoting these teachers rights in the national situation?

According to the polish report, European law is not very known and it seems to be too early to view its impact on the teachers rights. However, fears concern discrimination of polish higher education teachers with respect to foreign teachers in relation to employment in professorial positions at Polish universities, as polish universities requires a habilitation degree as prerequisite for promotion, while such a degree is not existent in some European member states.

In the UK European law has been of considerable assistance to augment workers' rights. In addition to the part time workers regulation and the fixed term employees regulations, as implementation law of the corresponding European directives, the working time regulation have assisted in obtaining holiday pay for part-timers. Also case law of the ECJ has been relied upon in the pursuit of claims challenging anti-discriminatory practices.

Question 6: Are there others issues and topics of national concern to you which you believe can be valuably addressed in a European-wide context?

The polish reply expresses hopes in the follow-up of the Bologna process, supported by the European Union to work towards a BA/MA/PhD model. This means that there will not be any other degree offered beyond the PhD and it may help the union to persuade those who oppose the idea to rid of habilitation. According to the NATFHE, the following issues are of concern: pay and conditions in a national bargaining context, industrial action and the rights to strike, the right to union representation, work loads, governance academic, freedom, intellectual property rights and past criminal records, the right to work as a teacher and relations with 16+ years old students.

Question 7: How might a Europe-wide network for information-sharing and co-operation on casework assist your work?

According to NATFHE, two ways of cooperation may be envisaged: Firstly establishing a best practice record on particular issues relating to employment and teaching matters. Secondly, to share information on the development of employment practices across the European Union. The Polish reply focuses on the added-value of sharing of information on how concrete legal cases based on European law have been solved. Discussing and consulting educational European law within the network may be useful as well. Such a network could be part of the consultation process at the European Union level when proposals for new directives or amendments are in process.

The reply of Portuguese FENPROF and SPGL focuses on the high unemployment ratios in the education sector, whereby some areas of the education lack of staff. In Portugal quality of employment and quality of working conditions have been neglected by the government, so that at the present time a large number of qualified educational professionals are unemployed. To better overcome this situation, proposals are made concerning measures to fight early school leaves, to reduce the number of pupils/students per classroom, to respect different rhythms according to pupils/students needs, encourage voluntary retirement after 30 years of service, to organise vocational training for teachers and lifelong learning schemes.

In Sweden, concerns are expressed related to working conditions in the higher education among employees at university and college. According to a survey carried out by Statistics Sweden, the work environment in the education sector has been badly affected by reductions of government allocations to undergraduate education and research and to graduate education. General features are the increase of the work load that links directly to stressful situations. Significant differences can be witnessed across the various staff categories. More than 70% of the teaching staff report to have far too much to do, and this percentage is somewhat higher for women than for men. A full 59% of teachers/researchers have to work overtime in order to carry out their duties, among non teaching employees, 24% do overtime. Although a large proportion of teachers experience relatively great work satisfaction, 3 out of 10 lecturers do not enjoy going to work. Stress situations lead to conflicts at the work place, 15% of the teaching staff has reported to have been involved in conflicts at least once in the last 3 months. Pressures are made on instructors to recruit students and transitions to make sure they pass their courses, otherwise allocations are cut, that leads to reduction of staff.

In the Netherlands, trade unions witness political changes towards more autonomy for schools, for example the Educational Council plants to grant the teachers more say in the management of their schools and educational institutions. Schools should be financed through budget in which schools have the rights to enter into obligations and make arrangements also concerning staff. Due to the fact that those arrangements will fall outside the scope of the so-called central accord, between the government and the trade unions, the unions might have less influence in the future. This trend is part of the government action towards the diminution of its role in the management of education and as counterpart to develop independent schools, where parties concerned (parents, teachers, institutions) decide on management matters including the terms of employment. Furthermore the political will to introduce an obligatory works council in the different sectors of the education

results in a powerful and influential position of the employees on an institutional level. This affects the negotiations on staff pay and other labour related subjects. Another issues is the shortage of teaching staff due to bad working conditions and lower wages in comparison to similar employment relationships in others European member states. Furthermore, changes in educational processes and changes in the nature of the teaching (teachers become coaches) leads to the decrease of interest to become teacher. A final important issue concerns the decrease in membership and financial problems of the unions, in general and in the education sector in particular.

Annex IV: Documents distributed at the Conference

Bercusson, B. (ed.) (2002), "European Labour Law and the EU Charter of Fundamental Rights – Summary version", ETUI, Brussels

Clauwaert, S. (1998), "Survey on Fixed term contracts", ETUI Report, Brussels

Clauwaert, S. (2002), Survey on the implementation of the Part-time work Directive/Agreement in the EU member states and selected applicant countries", ETUI, Report 73, Brussels

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