

LAW SOCIETY FORUMS

DEVELOPMENTS IN THE RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES

This forum was held on Thursday 20th. of February, 1975 in the Science Lecture Theatre at the University, Msida. The Chairman, Dr. Wallace Ph. Gulia LL.D., B.A., B.Sc., Ph.C., M.S.(Admin.) (Manch.), D.P.A.(Lond.), opened the proceedings at 6.00 p.m. by introducing the panel of speakers: Dr. Carmelo Mifsud Bonnici B.A., LL.D., Dr. Joseph Micallef LL.D., Prof. Salvino Busuttil Ph.D.(Ang.), Ph.D.(Manch.), Mr. George Agius Dip. Pol.Econ.(Oxon.) and Mr. A. Curmi, a very obliging last minute substitute for Mr. E.T.C. Calascione who could not attend the forum. The forum was conducted in Maltese.

The first speaker was Dr. Carmelo Mifsud Bonnici who gave a brief exposition of the legal situation in Malta. He explained in synthesis the main provisions of the Trade Unions and Trade Disputes Ordinance 1945, which deals basically with the law of industrial conflicts; the Conciliation and Arbitration Act 1948, which attempts to prevent or settle such conflicts; the Conditions of Employment (Regulation) Act (1952) which deals with the legal intricacies of a contract of service. Dr. Mifsud Bonnici also made reference to several special laws referring to specific classes of employment. The speaker went on to point out that industrial practices were, perhaps, more important than industrial laws, and ended by commenting on the lack of any legislation regulating Collective Agreements.

Dr. J. Micallef, speaking on trends in Europe, started off from the premise that the company should be run both by Management and by employees. This would lead, he said, to arguing for representation on Boards of Directors. He then went on to point out the significance of Works Councils in harmonious industrial relations. Dr. Micallef urged that the Works Councils should also comprise representatives from outside the plant itself, from consumer societies for instance. The speaker ended by stressing the importance of greater information to the workers, since they do, after all, have an almost equal interest in the plant as the proprietors.

Prof. S. Busuttil, speaking of the economic implications of Industrial Relations, pointed out that the days of conflict between entrepreneur and employee are numbered. Proprietor and worker

are today being forced into the same front, directing their powers against a common enemy – the multinational company.

Mr. A. Curri dwelt on the need for dialogue between capital and labour as the natural background within which industrial legislation can be truly effective.

Mr. G. Agius traced the history of Maltese Industrial Conflict from 1945 to the present day. While laying stress on the strength of a trade union and the pressure it can bring to bear on enterprise, Mr. Agius maintained that industrial disputes can be reduced, if not altogether avoided, by improving the general relations between employer and employee. Mr. Agius ended by urging the adoption of a sound credit-system backed by the state, on the West German and Japanese style, because this would ensure the stability of private enterprise, and, therefore, of labour.

After questions, the Chairman closed the forum by thanking the speakers and audience for their participation.

THE ADVERSARY SYSTEM

This forum was held on Wednesday, 26th February, 1975 in the Science Lecture Theatre at the University. The Chairman, Professor J.M. Ganado B.A. Ph.D.(Lond.) LL.D., started the evening off at 6.30. by briefly introducing the subject and the speakers: Dr. Victor Borg Costanzi LL.D., Dr. Hugh Harding B.A., LL.D., F.S.A., F.R.Hist.S, and Dr. J.L. Grech Ph.C., M.D., D.C.P.(Lond.), D.M.J., M.C.Path. In delimiting the area of discussion, Prof. Ganado postulated the following three questions: should experts be appointed by the courts, what control should the court have on the production of evidence, and should it ever take the initiative in the latter field?

After defining the adversary system as that system of procedure whereby the parties are allowed to produce any evidence in their favour to the exclusion of any competing initiative on the part of the court, Dr. Borg Costanzi pointed out that our own law adopts the inquisitorial system which grants much more control to the presiding judge or magistrate. This inquisitorial element is present not only in the obvious instance of an inquiring magistrate at the stage of the compilation of evidence, but all through the judicial process, right up to the court of appeal. Concentrating on criminal justice, Dr. Borg Costanzi dwelt at length on the point that this power of judicial initiative is a safeguard of true justice, in that the Court sweep corners unswept by counsel for defence or for prosecution.

Dr. Harding spoke first of the power granted to the Court in sec-

tion 644 of the Criminal Code of producing witnesses itself. This inquisitorial element in our law is preferable to the adversary system because, the speaker said, it ensures a greater amount of impartiality and prevents the sorry spectacle of two men brilliant in their field giving diametrically opposed evidence in open court. Dr. Harding put some useful suggestions which might render the application of our law less cumbersome: the courts should increase their control on experts; the courts should limit themselves to appointing truly technical experts, and do away with the practice of appointing legal experts; and finally, the appointment of additional experts should further be curbed. As far as initiative in the production of evidence is concerned, Dr. Harding concentrated on the power of the Court of Appeal to call in witnesses who had not given evidence at first instance. Dr. Harding approved of the wide application given to this rule by our courts in the interests of justice.

The last speaker, Dr. Grech, dwelt on the point that an application of the adversary system could lead to the loss of a good reputation because it is humanly impossible for an *ex parte* expert witness not to become involved in the particular case. The inquisitorial system does away with this problem. Dr. Grech then went on to make some practical points about expert evidence in general: the courts should be very careful to choose an expert precisely relevant to the point which stands to be decided; every witness should admit to himself and to others the insufficiencies of the natural sciences, and he should take care to distinguish between fact and opinion; on the other hand, counsel on either side of the fence should never expect a straight 'yes' or 'no' from an expert witness, precisely because of the imprecision of science; and finally, it is imperative that the various professions intermingle in order better to realise the limitations of each discipline which may come up in a court case.

After adding his own personal comment in favour of an eclectic system enjoying the best of both worlds, Professor Ganado opened the discussion to the floor, an invitation taken up wholeheartedly, as appeared from the number of interesting questions put to the panel. The Chairman put an end to the evening by thanking panel and audience for their participation.