

International Moot Courting – Learning European Law in a Different Setting

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A. Introduction

In a world of internationalization and globalization, law students from across Europe increasingly recognise that knowledge of national law only may no longer be sufficient, when it comes to future job opportunities. This knowledge, in turn, creates a demand for educational programmes, which are geared to respond to such a need. Many universities have European law as a mandatory part of their law school programme. The European Law Moot Court Society believe that moot-courting is another way – in an informal educational environment – to obtain knowledge about international and European law and to build up networks of like-minded lawyers throughout the European Union (EU).

Traditionally, moot-courting is a simulated court competition in which teams of students, on the basis of an invented case, prepare written submissions on questions of law and present their arguments in oral proceedings as if in a real court. And so is the European Law Moot Court Competition.¹ This Competition – which is by now the largest of its kind in Europe – takes place annually and is bilingual, French and English being the official languages. The aim of the present author in the following is to give an introduction to this particular moot court competition, which responds particularly well to the needs set out above.

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¹ More information about the Competition, the Case and the official rules can be obtained the Society's website <www.elmc.org> or by contacting the Lisbon OT at The European Law Moot Court Organizing Team, C/O Faculdade de Direito de Lisboa, Apartado 52103, 1700 Lisboa, Portugal. The OT e-mail address is ot@nifdl.fd.ul.pt.

B. How it All Started . . .

The European Law Moot Court Competition is organized by the *European Law Moot Court Society* (the Society), which was established in 1988 in Munich by a team of students around Mr Christoph Vaagt. The first oral rounds of the moot court took place in the beautiful settings of Villa Schifanoia at the European University Institute in Florence. This is the place where, according to legend, Boccaccio set his novel *'The Decameron'*. Already at the first oral round in 1989, the Competition was honoured by the presence of prestigious EU law experts, and the very first bench was presided by Mr Cruz Vilaça, who subsequently became the president of the Court of First Instance of the European Communities.

From the outset, the Society has been a non-profit organization, the running of which has been ensured by the generous sponsorship of large European law firms, European universities and the institutions of the European Communities. In the 2000/2001 moot court year the Society enjoys the support of prestigious law firms, universities and institutions such as Clifford Chance, Mannheimer Swartling and Liedekerke Siméon Wessing Houthoff, the University of Lisbon, the Law Faculty of the University of Copenhagen, and, last but not least, the European Court of Justice (ECJ) and the EU Commissions.

The Society consists of law students and young professionals, who take a keen and serious interest in providing an opportunity for students across Europe to meet and compete and to further the understanding, tolerance and international awareness among the peoples in Europe. The specific aim of the Society was, from the very outset, to stimulate studies in European law, and to that end the Society organizes every year the European Law Moot Court Competition (the ELMC Competition). This competition is based on a number of guiding principles that reflect the fundamental goals of the Society's work.

C. The Aims of the Society

The ELMC Competition has been designed to facilitate maximum student involvement in the study of issues of law affecting the peoples of Europe. The essential elements of the Competition, and the *guiding principles* upon which the activities of the Society, are founded, are that:

- the Competition should be open to all students of whatever nationality and discipline;
- not only should the Competition be open to all students, but that the Society should encourage all students to participate;
- the Competition and the Society should facilitate and encourage the meeting of students from different cultures and nationalities;

- the Competition should not require any previous, in-depth knowledge of European law, but should encourage the acquisition of that knowledge through participation;
- the Competition should maintain a high academic and pedagogic standard;
- the issues of law raised by the Competition problem should, so far as possible, be current, bearing in mind the state of development of the EU;
- through the process of Competition, the Society should create an incentive for students to learn, to develop and to excel in themselves;
- above all, the Competition is a means to an end (the stimulation of studies in European law) and not an end into itself.

D. The Present Structure of the Competition

Over the years the Competition has grown considerably. From only one oral round in Florence it has expanded and now consists of *three phases*, one written and two oral rounds. These are set out below.

The *written phase* takes place from September to November each year. The Competition is commenced by the publication of the problem or the Case, which in the 2000/2001 Competition happened on the 1 September. The Case was published at the Society's official website <www.elmc.org> and was sent to more than 200 universities throughout Europe inviting them to form teams, which would prepare submissions setting out arguments on behalf of both the applicant and defendant in the proceedings before the Court of Justice 'invented' in the Case. This year the Case involves questions on the free movement of goods and service, the scope of 'a court or tribunal' referred to in Article 234 and, finally, the interpretation of the newly adopted e-commerce directive. A short outline on the facts are set out below.

The 2000/2001 Case concerns an Internet company MOL, established in one Member State, which maintains a website where consumers can download music or chose certain music to be downloaded on to a CD. Some of MOL's customers are established in another Member State, Inventium, where advertising legislation is based on a system of self-regulation by the industry.

From time to time MOL advertised special offers on its website. A competing company, DirectM established in Inventium, claims that these special offers are contrary to the advertising legislation in that Member State. DirectM complains to the Advertising Board, which is a part of the industry regulating advertising in the Member State concerned. The complaint is appealed against to the Advertising Appeal Board. The Advertising Appeal Board decides to stay proceedings and refer a number of questions to the ECJ.

On the basis of the facts set out summarily above, the participating teams are invited to prepare submissions on behalf of MOL and DirectM on the following issues:

- is the Advertising Appeal Board is a court or tribunal within the meaning of Article 234?
- does the national advertising legislation infringe the free movement of goods and/or services within the EU?
- may there be any infringement of the e-commerce directive?

The deadline for the submission of the written submissions was 15 November 2000, where they had to be returned to the organizing team (OT), this year physically located in Lisbon and consisting of law students from the University of Lisbon. These Lisbon OT members will ensure that the written pleadings are sent to a panel of judges made up of distinguished professors, judges, lawyers and representatives from the European institutions, all experts of EU law. These experts will subsequently also be acting as judges in the first oral rounds.

The pleadings are assessed according to criteria established by the Society and set out in the Official Rules. The best 40 teams are selected on the basis of their written submissions and invited to attend a Regional Final, the first stage of the oral rounds.

Four Regional Finals are held in February each year in four different European, but not necessary EU, cities. These have, over the years, included Berlin, Brussels, Budapest, Copenhagen, Dublin, Edinburgh, Florence, Heidelberg, Leiden, Prague, Tartu, Thessaloniki, Toulouse, Turku, Uppsala, Vienna and Warsaw. In the 2000/2001 Competition the four Regional Finals will be hosted by the universities of Tallinn (Concordia), Durham, Maastricht and Lisbon.

At the Regional Finals, the teams will be requested to present their arguments orally to a panel of eight judges, those who have already corrected the written pleadings during the first round of the Competition. In addition, each team will be requested to prepare submission on behalf of either an Advocate-General (AG) or a Commission Representative (CR).

Out of the ten teams and AG/CR participating in each Regional Final only the best team and the best AG/CR proceeds to the third stage, the *All European Final* in Luxembourg. This event is held courtesy of the *ECJ* and enjoys the support of President Rodríguez Iglesias and Dominique Marro, Head of the Press and Information Division. The All European Final takes place at the *Court of Justice's* premises in March each year. In 2001 it will take place on Friday, 9 March, bringing together the winners from each of the four Regional Finals.

The Final is preceded by a visit to the Court on the day before. Here the participants will hear legal secretaries explaining their work at the Court, meet with officials from the Court's Press and Information Division, and eventually attend a Court hearing. The main aim of this visit is to contribute to the students' knowledge of one of the most important judicial institutions within the EU.

At the day of the Final, the four winning teams and the two AGs and two CRs from the Regional Finals will present their arguments on behalf of the applicant and the defendant in front of a panel of judges and AGs from the ECJ and the Court of First Instance. Needless to say the impact of such a presentation on the future professional life of the students concerned is considerable, not to mention the

individual experience of each student. However, it is even more interesting to note that the members of the ECJ and the Court of First Instance often highly praise the skills of the students and have stated that these presentations are certainly comparable with those that they hear in the course of daily court life.

After two semi-finals in the morning and the final in the afternoon, the winners are announced by the Court at a ceremony hosted by the President of the ECJ, Judge Rodríguez Iglesias and the President of the Court of First Instance, Judge Vesterdorf. The winners are awarded valuable internships at European law firms and the legal services of the European Commission and the European Council.

The European Law Moot Court Competition is concluded each year by a gala dinner in Luxembourg, to which the members of the ECJ and Court of First Instance, sponsors, organisers, previous year's winners and, of course, the year's finalists are invited. At the same time the dinner marks the beginning of yet another moot court year, four new sites for the Regional Finals must be found, the Case has to be drafted, universities must be invited to form teams.

D. Moot Courting as a Means of Learning

Knowledge about Europe and European law may be obtained by many different means. As mentioned in the beginning of this article, most European universities have EU law as a mandatory part of their programmes. Many universities also offer specialised courses and Master Programmes on European issues, which may even go beyond law and include subjects such as European economy and politics of European integration. Also, in daily life one is confronted with European issues, newspapers write about European affairs, these are often also debated in the television programmes, and in some Member States the citizens are even called for referendums on specific EU questions.

The members of the European Law Moot Court Society believe that the ELMC Competition presents another, more informal, yet more intense way of learning European law. Over a period of half a year, the students participating in the competition must by themselves look up sources of law, and only they are responsible for the final result, which cannot be found by simply consulting the text books. The Society believes that this does make a difference in terms of the attitude to which the topic is approached.

Some 150 students in 40 teams are invited to Regional Finals outside their home countries, where they have to advocate their case in front of an international panel of highly distinguished EU law experts – an experience which is much more challenging than most 'normal' oral and written exams. Here the students will also meet the other teams from all over Europe and they make friends and work on their personal networks of like-minded lawyers. But of even greater importance is the atmosphere and surroundings of the Regional Finals, as they contribute to each student's own

understanding of the fact that not only are they nationals of their own state, but that they do also belong to a larger community. This kind of experience cannot easily be found simply by attending EU law classes. And this is certainly also what moot-courting is about.

E. Conclusion

In November 2000, more than 200 students from Belarus and Ukraine in the East to California in the West have engaged in the process of participating in this year's ELMC Competition. By now they know that this process has and will bring them hours and hours of work under great pressure and time restraints, many late nights and frustration; but it will also provide them with the unique experience of what it is like to prepare their own case, present it to a panel of distinguished EU law experts and to meet students from other countries. Finally, as indicated above, moot-courting is not only about improving future job opportunities; it is as much about moot, meet and compete and, ultimately, about promoting peace, love and understanding amongst the people of Europe.