

"We do not engage in politics" from the Frankfurter Allgemeine Zeitung (27 January 2003)

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‘We do not engage in politics’

An interview with the President of the European Court of Justice

By Reinhard Müller

LUXEMBOURG, 26 January. Council, Commission, ‘Dual Presidency’, Parliament. The Convention on the Future of the European Union is presently addressing fundamental issues relating to the structure of the Community. However, one important body, namely the European Court of Justice, is playing at most a supporting role in the consultations. Its president, Gil Carlos Rodríguez Iglesias, regards this as understandable because, unlike in the case of the other institutions, the function of the Luxembourg Court has been clear from the outset and remains relevant. Its role as a custodian of Community law has not changed in any way. In fact this position within the system of European relations was never as controversial as its judgments on, for example, the free movement of professional football players, the German law on the purity of beer, access by women to military posts or the common organisation of the market in bananas.

The President therefore considers that the Court, which recently celebrated its fiftieth anniversary, has no need of any new tasks. Nonetheless, in the interview with this paper, Mr Rodríguez Iglesias made it clear that he would like to see more powers for the European Parliament and greater transparency. He does not see a deficit of legitimacy but of a ‘direct democratic mandate’. The Spaniard, who speaks excellent German, English and French, would like to see a Community which is close to its citizens. However, he also knows that there are limits to the desire for greater transparency. The complexity of the European Union is not the result of ‘evil intent’ but rather of its nature. As Federal Chancellor Gerhard Schröder and President Jacques Chirac have done recently, Mr Rodríguez Iglesias speaks of a union of States, peoples and citizens. In the view of the President of the Court, the Community will not develop into a federal European State in the foreseeable future. Europe’s ‘ambivalence’ is what gives it its fascination and makes the EU a ‘model for the rest of the world’.

The Spaniard describes the relationship with the German Federal Constitutional Court as ‘excellent’. By that, he does not mean just personal contacts. A trained specialist in international law, he considers that the possibility of an open conflict arising from the Constitutional Court’s Maastricht judgment is merely hypothetical. The judges of the German Constitutional Court reserved final judgment, provided that the standard of fundamental rights, which it regards as mandatory, continues to be maintained by the European Court of Justice. Mr Rodríguez Iglesias points to the different approaches of the two courts but stresses that ‘we are essentially shaped by common values.’ Both courts are responsible for ensuring that a genuine conflict does not arise in the first place. The effect of Community law in Germany has been strengthened precisely by the Federal Constitutional Court. For example, it has ruled that any court — including the Federal Administrative Court — infringes a citizen’s constitutional right to a hearing before the proper statutory court if, where any doubts exist, it fails to refer a case to the European Court of Justice.

The cooperation between the national constitutional courts and the Court in Luxembourg is regarded by its President as so successful that he does not deem a further ‘court of competence’ to be necessary. Unjustified criticism of the European Court of Justice lies behind such demands, which emanate primarily from Germany and seek greater demarcation of areas of competence. Mr Rodríguez Iglesias does not dispute that, in the initial period in particular, the judges interpreted the law in a manner which was particularly favourable to the Community. Now, however, the rights of the Member States are protected more. In the view of the President of the Court, this is in the nature of Europe’s development: at the beginning it was precisely the European Union which required greater protection — now it is the Member States. Consequently, a new ‘court of competence’ would be a step backwards to conventional arbitration under international law. However, he does consider that special legal recourse for disputes over competence is conceivable. In order to clarify the relationship with the European Court of Human Rights in Strasbourg, Mr Rodríguez Iglesias, who is a university lecturer, also advocates the accession of the European Union as a whole to the European Convention on Human Rights.

At present, it is a different accession for which the Court of Justice is making preparations. Each of the new Member States of the Community will — in the same way as the present EU countries — appoint a Judge in

Luxembourg. However, problems are being caused primarily by translation. The Judges deliberate in French without interpreters, but a judgment cannot be pronounced until it has been translated into all the official languages.

Mr Rodríguez Iglesias, who was born in 1946, has been a member of the European Court of Justice since 1986 and is accustomed to being flooded with cases. The impact on European law and business of the rulings in Luxembourg has grown. Nonetheless, Mr Rodríguez Iglesias stresses what the judges of the German Federal Constitutional Court also like to emphasise in relation to their court, namely that the Court of Justice does not choose its cases but acts only when requested to do so. Moreover, he emphasises that ‘We do not engage in politics.’