President of the Court of Justice of the European Union

Palais de la Cour de Justice

Boulevard Konrad Adenauer

Kirchberg

L-2925 Luxembourg

Luxembourg

21 May 2013

Dear President Skouris,

We represent the organisations listed below.  We take the unusual step of writing to the Court in order to suggest that a public consultation should be held in order to gather the views of our organisations, and of others, on a proposal that we understand has been made to amend the Rules of Procedure of the General Court of the European Union.

We have not seen the proposal. We understand that the General Court has proposed to the Court of Justice that the General Court's Rules of Procedure should be amended to permit exceptions to the principle that a person should know the case against him or her. There may therefore be cases in the future in which applicants for annulment of decisions of the European institutions might have their applications determined by the Court without applicants having seen all evidence adduced against them by the Council of the European Union (or by other relevant institutions or Member States).

Rules of Procedure are of course a matter for the Court, although amendments are subject to approval by the Council.  However, it seems to us that any amendment of the kind referred to above may have a serious impact on the rule of law, natural justice and rights of defence, and may raise serious issues of constitutional and public importance for fundamental rights in the European Union, upon which our organisations (and others) may wish to comment.

We understand that there have been discussions on this issue with the Council, Commission, Member States and third countries, ie parties that in effect represent only the interests of the defendants and decisions-makers before the Court, but not applicants or the public interest.  We have heard that a number of these institutions are aware of the proposed rule change and have commented on it.

We understand that, if such an amendment is made as a matter of principle, it is envisaged that at a later stage the Court will consider how a case of this kind might operate, for example, by security cleared special advocates, closed material procedures, or some other approach.  However, even to introduce a general provision of the kind we understand has been proposed is a major step that will have profound implications.

You may be aware that the United Kingdom’s recent legislation, the Justice and Security Act, which gives courts a discretion to use closed material procedures in civil proceedings in the United Kingdom, was the subject of intense and repeated public debate and Parliamentary scrutiny.  There were several rounds of full public consultation (including with civil society, the Independent Reviewer of Terrorism Legislation (David Anderson QC), and special advocates), significant controversy and debate about its compatibility with the rule of law, and amendments proposed to try to ensure that any closed procedure could only be considered in rare and exceptional cases, with full judicial control, and only where absolutely necessary.

Concerns of this kind may affect both the validity and legality of any amendments to the Rules of Procedure under both European Union law and the European Convention on Human Rights, as well as their design and application.  It would be unfortunate if the Court were to change its rules in this significant manner without public consultation. When it was once suggested to the European Court of Human Rights by the Government of a Contracting State that it should look at documentation that could not be disclosed to the applicant on national security grounds, the Court refused to do so.

We would be most grateful if you would place this letter before the Court of Justice when it considers the proposals from the General Court. If you were to send your reply to the Chairman of the Bar Council of England and Wales at 289-293 High Holborn, London WC1V 7HZ we will make sure it is circulated to all of our organisations.



Maura McGowan QC, Chairman, Bar Council of England and Wales

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Lucy Scott-Moncrieff, President of the Law Society of England and Wales

Austin Lafferty, President, Law Society of Scotland

The Rt Hon Lord Gill, Lord President, Faculty of Advocates, Scotland

Mark Mulholland QC, Chairman, General Council of the Bar of Northern Ireland

David Nolan SC, Chairman, General Council of the Bar of Ireland

Andrea Coomber, Director, JUSTICE (the United Kingdom section of the International Commission of Jurists)

Shami Chakrabarti CBE, Director, Liberty (the National Council for Civil Liberties)

Professor Sir Jeffrey Jowell QC, Director, the Bingham Centre for the Rule of Law

Tom de la Mare QC, Chair, Bar European Group

Javan Herberg QC, Chair, Constitutional and Administrative Law Bar Association

Gordon Nardell QC, Circuit Leader, European Circuit of the Bar of England and Wales

James Flynn QC, Chairman, Competition Law Association

Mark Anderson QC, Chairman, Midland Chancery and Commercial Bar Association

Lucinda Orr, Chairman, Bar Association for Commerce, Finance and Industry

Chantal-Aimee Doerries QC, Chairman, Technology and Construction Bar Association

**We have sent copies of this letter to:**

Dr Marc Jaeger, President of the General Court of the European Union

Lynn Hewlett, Registrar, European Court of Justice

Emmanuel Coulon, Registrar, General Court of the European Union

Klaus-Heiner Lehne MdEP, Chair of Legal Affairs, European Parliament

Lord Boswell of Aynho, European Law Scrutiny Committee of the House of Lords

Dr Hywel Francis MP, Parliamentary Joint Committee on Human Rights

Legal Directorate, United Kingdom Foreign and Commonwealth Office