

Christoph Strecker [050509] MEDEL 20 years

MEDEL, hier, aujourd'hui et demain MEDEL, yesterday, today and tomorrow

Cari amici italiani,

innanzitutto vi ringrazio per la vostra ospitalità e per la preparazione perfetta di questo evento. Penso e spero che la presenza di tanti magistrati di tutta l'Europa sia anche un cenno di solidarietà con i colleghi italiani nella loro situazione attuale.

Vi prego d'accettare che adesso continuerò nelle altre lingue di MEDEL.

Chers collègues francophones,

Le français était notre langue commune lors de la fondation de MEDEL. Le respect à l'égard de notre histoire pourrait exiger d'en parler en français. Mais notre histoire contient aussi le développement et l'élargissement de MEDEL qui nous a enrichi et dont une conséquence est que maintenant nous avons parmi nous une majorité qui sait mieux l'anglais que le français.

C'est ainsi que je vous prie d'accepter que je continue en anglais.

Dear friends, dear colleagues, MEDEL is 20 years old – that's what we celebrate today.

It is impossible to give in a short time an outline of a long history without omitting important aspects. So I feel free to contribute to our reflections just some subjective observations and considerations.

Let me begin with our pre-history, with the roots of MEDEL:

In the period of fascism in Europe the judiciary generally failed miserably, with only few exceptions. Instead of defending the rule of law and the civil rights, the judiciary delivered legitimation to tyranny. After the collapse of the fascist systems, a great part of the judges remained in their functions. The judges' organizations were mainly interested in the defence of good working conditions and privileges, they were not interested in discussions about the past.

Only in the younger generation of judges there were groups that discussed history. Their conclusion was that the defence of democracy requires a democratic judiciary.

So these groups gave themselves names which emphasized this democratic approach: Judges and prosecutors in France and in Belgium and prosecutors in Portugal created their unions and named them "syndicat" or "Sindicato". In Germany the progressive judges and prosecutors joined the trade union of the public administration. Spanish prosecutors called themselves "progressive": Union progresista de Fiscales. In Italy and Spain we find democratic names: Magistratura Democratica, Jueces para la Democracia.

These groups got in touch with each other in the late seventies and the beginning eighties of last century. Once a year, in November in Paris, the General Assembly of the French Syndicat

de la Magistrature in the Palais de Justice saw guests from the brother organizations of other European countries. In February 1983, the Syndicat de la Magistrature and the University of Lille organized a big congress on “Judiciary and Democracy in Europe”. The papers have been published in a book with the title “Etre juge demain“. At this occasion the participating colleagues of various countries decided to create a European organization which unites these national groups. After two meetings in Bruxelles and Bordeaux, on June 15th 1985 we met in Strasbourg in the building of the European Parliament which gave us the technical support for the foundation of what we named “Magistrats Européens pour la Démocratie et les Libertés”, European judges and prosecutors for democracy and fundamental rights.

I am happy to see here today several friends whom I know already since the foundation of MEDEL or even before. Let me add the name of one absent friend: Pierluigi Zanchetta. If he could, I’m sure he would be with us, with his enduring kindness and cheerfulness.

Instead of reading the statutes, here I give you a short abstract of the objectives.

Implementation and defence

- of the rule of law in a united Europe;
- of a European judicial culture with an independent and transparent judiciary that is submitted to public control;
- a judiciary that defends the rights of minorities and of the underprivileged;

Defence of the judges’ civil rights like freedom of speech, freedom of assembly and freedom of association and of membership in trade unions.

Soon MEDEL began to grow. Very soon Greek colleagues founded a Greek section (in the meantime we have also a Cypriot one), The Portuguese judges joined us, and after the breakdown of the socialist systems in Europe the Polish and Czech colleagues created democratic organizations which now are members of MEDEL.

The every day work of MEDEL is done in the administrative board which is composed by the national delegates and meets generally three times per year. It elects the bureau and the president. Until now we had presidents from Belgium (Christian Wettinck), France (François Guichard), Germany (Heinz Stoetzel) and Portugal (Orlando Afonso). Our actual president is an Italian (Ignazio Juan Patrone). The vice president comes from Spain (Miguel Carmona), his predecessor from Poland (Teresa Romer).

In the Conseil d’Administration and in congresses we discuss the actual themes which require the attention of a democratic judiciary – immigration, imprisonment, corruption, terrorism, alternative dispute resolution, and so on ...

I am not going to tell all details of our history. When I mention Palermo and Naples, you know how much work had been done beforehand and that we had some effect in the European Council with our proposals for a European statute of the judiciary. When I mention Trieste, Popovo or Belgrade, Barcelona and Povoá do Varzim, you remember the extension of our view and of our activities first towards formerly socialist Central Europe, later on towards Latin America where we have colleagues and friends who need our solidarity. When I mention Iraq, you will remember our protests against war and against torture. At several occasions MEDEL has publicly emphasized the absolute predominance of law and the prerogative of international courts.

Without exaggerating, we can proudly say that often we recognized the importance of these topics much earlier than the majorities in the judiciary or in the political world. So we could and so we can often contribute with qualified statements to the upcoming public discussions.

Soon we will have a presentation in the internet. The preparation of “medelnet.org” is in the hands of Marie-Anne Swartenbroeckx. We are grateful for her ambitious work and encourage her to go ahead with it.

Since we are accredited as NGO at the Council of Europe and since our expertise is being asked by the European Union and its institutions, we have a problem: To meet all demands, to accomplish all tasks, we need more manpower than we have. We must find ways to extend our activities far beyond the members of the Conseil d'Administration. How can we motivate more of our members to participate in our fascinating activities?

Perhaps we could hold more General Assemblies. But there we have to face another problem. Our budget consists of nothing but the contributions of the national member associations. They are hardly sufficient for the basic activities, but not for big assemblies with translation service and so on. Where can we find financial support? But even if we find it: Do we really want it? Our economic poverty is the price that we pay for a complete independence.

We badly need an office with a part-time secretary. The administrative duties of Ignazio Patrone, Miguel Carmona and Marie-Anne Swartenbroeckx require too much of their precious time that they badly need for substantial work.

But here we have again the economic problem. Where do we find financial resources without risking our independence?

In the defence of independence we have learned to practice solidarity. Solidarity was one of our central themes right from the start. I remember a congress in Belgium in favour of Christian Panier who was threatened by disciplinary prosecution, I remember various activities in support of our Italian colleagues. Solidarity also beyond the borders of Europe: With Columbian judges, colleagues in other countries in Latin America, recently with the tunesian judge Yahyaoui.

Our solidarity is not something that we are giving. Solidarity is a mutual relation, in which we are learning from those colleagues who are in trouble because of their commitment and of their courage.

This brings us to the individual aspect of our lives as judges and prosecutors. All the activities of MEDEL I have been talking about are something different from our own daily work.

First: The statements of MEDEL are directed towards the political world.

Second: When we express solidarity with colleagues who are in trouble and whom we admire because of their courage and commitment, we still can be ourselves bad judges, fearful, submissive and opportunist. Expressing solidarity with colleagues is much easier than following their example, and it is no guarantee that we will do so.

Since 20 years our commitment has been dedicated to the rule of law in a united Europe with an independent judiciary. Now the united Europe begins to become reality. The European arrest warrant and the EU-directive Brussels 2 a (French: Bruxelles deux bis) do already now

permit the execution of court decisions in other countries without any preliminary procedure of recognition. The directive Nr. 805/2004 will follow this year, it applies for civil law in general. That frightens us. Why does it? It frightens us, because we know too little about the procedures and practices in other countries, about the way how the colleagues there make their decisions. We don't trust them.

These European regulations, however, are based on the assumption that judges in Europe can trust in the decisions of their colleagues in other European countries.

In whom can we trust? Can others trust in us? The boundaries are not between different countries. Inside every country they are boundaries between different attitudes, between conscientiousness and negligence, between empathy and cynicism. Can we be sure that we are always on the right side?

That cannot be taken for granted. Even inside MEDEL we know very little about each other's professional practice.

The upcoming discussion about professional training will have to include not only the exchange of informations and the development of curricula, but also mutual visits in our courts all over Europe with discussion of our practices. And we, the judges organized in MEDEL, should have the ambition to realize procedures and decisions that don't permit any doubt about our attitude and about the seriousness of our efforts. It must be seen that we are bound to democracy and fundamental rights. Our daily judicial practice can contribute to a united Europe of which nobody must be afraid.

Now we are fighting since 20 years for the rule of law, for judicial independence, for many objectives that merit our commitment. Did we change the world? Is it better than before? When I see how often achievements and progresses are being cancelled, I think at the myth of Sisyphos. He had to roll a rock on the top of a hill again and again. Every time when he had almost arrived, the stone rolled back down. What frustration to fail and to fail again!

On the other hand – are we obliged to arrive on the top with our rock? Perhaps it is megalomania to think we can change the world measurably. Perhaps our efforts cannot be described adequately in terms of achievement and arrival.

The Rule of Law can never be achieved definitely. The notion "Rule of Law" does not describe existing conditions, but a process. It means a way, a movement. We are part of it. We are free to feel frustration like Sisyphos or to look for another metaphor that is more adequate for a never ending process. What about water? Water never arrives, and nobody is frustrated. Water is coming and flowing and refreshing. Water can be powerful and irresistible, if necessary. Water is a condition of life. I think that justice - as we are seeing it - can be described adequately with such a metaphor. We are not obliged to achieve a goal, we don't have to arrive.

As MEDEL and as individuals we accomplish our duty when we are like water – determined, refreshing and bringing forth conditions of life. And nevertheless, this is a very ambitious aim, because it makes high demands on ourselves.

Dear friends, let not Sisyphos be our patron, but Amos, the prophet in the Bible, in the Old Testament.

His saying (5, 24) has been my guide-line throughout my professional life, therefore let me quote it first in German, as I have it in my memory and in my mind:

Das Recht ströme wie Wasser, die Gerechtigkeit wie ein nie versiegender Bach.

And in English:

Let justice run down like waters and righteousness like a never- failing stream.

Chers amis, je reviens à langue française du début :

"Mais que le droit coule comme de l'eau, et la justice comme un torrent intarissable."

Cari amici italiani, terminerò con la parola del profeta Amos come ho cominciato, in italiano:

"Piuttosto scorra come acqua il diritto, e la giustizia come un torrente perenne "