

BULLETIN
of the
U.S. BRANCH
INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW
ALVIN GOLDMAN, *editor*

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[U.S. Branch web site: lawhelp.github.io/islssl/board.html

Int'l Society web site: <http://islssl.org/>]

Notes From the Chair
by Steve Befort

I want to start this column by congratulating Janice Bellace on her election as the next President of the International Society of Labor and Social Security Law. She has many innovative ideas for invigorating our international organization (see the report, below), and I am sure she will make the U. S. Branch proud.

I was pleased to attend a U.S. Branch sponsored program at this year's Colloquium on Scholarship in Employment and Labor Law (COSELL) at Texas A & M Law School on September 16. Matt Finkin organized and moderated a panel of international scholars who discussed employer access to employee social media from a comparative perspective. The panelists were David Mangan (City University of London), Mimi Zou (Chinese U. of Hong Kong), and Rudiger Krause (University of Göttingen). It was a tremendous program and hopefully garnered us some positive attention from an audience of generally junior labor and employment scholars.

The U.S. Branch will conduct elections early next Spring for officer and executive board positions. We also are looking for someone to assist Alvin Goldman in the twice-annual preparation of this newsletter. If you are interested and willing to serve as an officer (Chair, Vice-Chair, Secretary-Treasurer) or a newsletter editor please let me know. I also would be happy to discuss the duties of these positions. A call for executive board nominations will be forthcoming.

Finally, the next opportunity for substantive participation in an ISLSSL event comes with next year's World Congress in Turin, Italy on September 4-7. A call for papers will be issued in the not too distant future. Please consider answering that call.

Janice Bellace, ISLSSL President-elect

This Fall, at the European Congress in Prague, the International Society's governing body elected



U.S. Branch member **Janice Bellace** as the Society's President-elect. Janice will be the third member of our branch to hold this office. (The late Benjamin Aaron and the late Clyde Summers also served as the International Society's Presidents.)

Janice is Professor of Legal Studies and Business Ethics, and Professor of Management at the Wharton School of the University of Pennsylvania where she holds the Samuel Blank Chair in Legal Studies. Since January 2016, she has been the Director of the school's Tanoto Initiative which seeks through research and teaching to engage faculty and students in business and economic developments in Indonesia and ASEAN.

Previously she was the Director of the Huntsman Program in International Studies and Business, Penn's flagship undergraduate joint degrees program in which students pursue an integrated curriculum leading to the awarding of two degrees (the B.S. Econ from the Wharton School and the B.A. from Penn's College of Arts and Sciences). Janice's service at Wharton includes being deputy dean, the School's chief academic officer, from 1994-1999 and chair of the Department of Legal Studies and Business Ethics from 2008-2012. She has also held the post of Deputy Provost of the University of Pennsylvania, overseeing the faculty, and all graduate and undergraduate programs.

Her research is in the area of labor and employment law and employment relations, with a focus on how international human rights concepts shape regulation and corporate behavior. During her career at Wharton, Janice has taught the introductory

foundation course in business law, and courses in the area of labor and employment law, negotiations, labor relations, human resources management and international human rights.

In 1999, Janice took a leave of absence from Penn to become the founding president of Singapore Management University, from which she stepped down in 2001 and then served as a trustee. Currently, she is the chair of SMU's International Academic Review Panel. She is also on the international advisory board of universities in Italy and Turkey.

Janice Bellace's leadership in professional organizations currently includes President of the Labor and Employment Relations Association (of the United States) and treasurer and executive officer of the International Society for Labor and Social Security Law. From 2009-2012 she was President of the International Labor and Employment Relations Association and from 1995-2010 was a member of the ILO's Committee of Experts.

For ten years Janice Bellace was co-general editor of the Comparative Labor Law Journal (now the Comparative Labor Law & Policy Journal) with Clyde Summers and is a former Secretary of the Section on Labor and Employment Law of the American Bar Association.

In May, Janice received an honorary doctorate in economics from the University of Sydney in Australia and in July was awarded the Ordine della Stella d'Italia that recognizes expatriates and foreigners who have contributed to the promotion of Italian culture and interests. (However, she notes with disappointment that it does not speed transit through immigration control at Italian airports.)

2017 European Congress of ISLSSL and the Society's Future (based on Janice Bellace's report to the US Branch's Executive Committee)

The regional congress in Prague was extremely well organized; most sessions avoided the reading of national reports but instead were presented in a manner that provided expert overviews and provoked discussion.

The Society presently has 48 national associations. The Society's current President, Tiziano Treu has made efforts to revitalize the activities of "study groups" by adding topics such as free trade agreements. Giuseppe Casale of the ILO, the Society's Secretary, has been on top of all issues and things that need to be done, and has been very good

at maintaining communications with the national associations.

Janice Bellace, as U.S. delegate to the Executive Committee, raised the delicate that some members have concerns about alleged competition from the Labor Law Research Network (LLRN), an initiative undertaken by younger scholars a few years ago that has attracted many participants. She observed that LLRN is a forum for presenting new published research and research in progress as contrasted with the mission of the ISLSSL which aims to enlighten our members by a comparative analysis of law and a review of international law, and also to encourage dialogue among academics, government officials, and practitioners. Janice sees the organizations as complementary and will approach her years as ISLSSL President from that perspective.

At the Congress Janice stated she anticipates that the "Young Scholars" initiative that Tiziano Treu started will become a standard part of regional and world congresses (with meetings annually). At the Executive Committee there was a discussion of who is a "young" scholar. The consensus was that "under 40" seems appropriate but should not be a rigid formula—"in the early years of the career" might also be applicable.

In an effort to expand ISLSSL participation, Janice proposes starting a "Doctoral Students' Consortium" at the world congress (and maybe regional congresses). The idea is that doctoral students will come from all over the world to the annual meeting and discuss their thesis topics and research, get critiqued, and have an opportunity to network. Also, it will give them a chance to identify the Society as their future professional association. Her enthusiasm for this effort is based on speaking in recent years at seminars for doctoral students in Europe where she has encountered "a lively, engaged group of young people."

Janice also hopes to include a few refereed papers sessions at the world congress as a vehicle for helping younger academics get funding which often is contingent on presenting a paper.

Another initiative President-elect Bellace proposes is to start a Facebook group to facilitate communicating directly (and promptly) with members. The idea is that *occasionally*, the ISLSSL Facebook group would be informed of something significant (sometimes simply saying in effect "go to the website to get more information about the upcoming regional congress").

Up-coming Conferences

-Sep. 4-7, 2018, Turin, Italy. The next world congress of the Society is scheduled for Turin, which is close to the Milan international airport. It will be held at an ILO training center that is a first rate facility on the edge of the city, with its own park-like campus and its own 300 room residence building. Overflow lodging, with shuttle buses arranged, will be accommodated by hotels in the city center.

For details respecting the host city, see:

<http://slowitaly.yourguidetoitaly.com/2013/11/10-reasons-why-turin-should-be-on-your-italy-bucket-list/>

-July 23-27, 2018- Seoul, South Korea. World Congress of the International Labor and Employment Association. Theme: “**Employment for a Sustainable Society: What is to be Done?**” Details available at: <http://www.iler2018.org/>

Recent Member Activities

Ronald Brown, “Made in China 2025: Implications of Robotization and Digitalization on MNC Labor Supply Chains and Workers’ Labor Rights in China,” 9 *Tsinghua China Law Review* 1 (2017); “Up and Down the Multinational Corporations’ Global Labor Supply Chains: Making Remedies that Work in China,” 34 *Pac. Basin L. J.* 103 (2017); “U.S.-Russia-East Asia Comparisons of Dispatch (Temporary) Worker Regulation, 5 *Russian Law Journal* 6 (2017)”; *Chinese Style Global Trade: New Leader in Asia: New Rules; No Labor Protections in its Free Trade Agreements*, _ *UCLA Pac. Basin L. J.* _ (2017-18); *Due Diligence “Hard Law” Remedies for MNC Labor Chain Workers*, _ *UCLA Journal of International Law and Foreign Affairs* _ (2017-18); OECD National Contact Point, Denmark: Specific Instance Notified by Clean Clothes Campaign Denmark and Active Consumers Regarding the Activities of the PWT Group, Final Statement, 17 October 2016, 3 *International Labor Rights Case Law* 233 (2017); *Government’s Obligation to Address Obstacles to Freedom of Association and Collective Bargaining Rights Reiterated in Korea Metal Workers’ Union and others v the Republic of Korea*, 3 *International Labor Rights Case Law* 281 (2017)

New Journal from Japan

The Japan Institute for Labor Policy and Training (JILPT) has launched a new English journal “Japan Labor Issues”. **Kazuo Sugeno**, a past President of the International Society, is Editor-in-Chief.

To regularly receive the journal, as a free email attachment, register your email address at:

<https://www.jil.go.jp/english/emm/jmj.html>

The first two issues of this new journal offer insights into a number of interesting aspects of the law’s impact on employment in Japan particularly with respect to its aging population and growing work force shortage.

Japan’s population has been in decline since 2011 and a large decrease in the working age population is anticipated. For some time, Japanese legislators have realized that it faces a financial problem for pension funding inasmuch as many enterprises long required workers to retire at age 60. Yet, for years Japan has led the world in average longevity. (Women 87 compared with 81 in the U.S.; men 80 compared with 76 in the U.S.) Moreover, mandatory retirement at age 60 presented new retirees with an income problem because pension payments started at age 61. As a way to help workers through this period, some companies allowed workers to temporarily continue in their old jobs, others allowed them to continue either part-time or in lower paid positions. Still others left the workers to their own devices to get through the financial hiatus.

In an effort to cope with the dual financial problems, the Act on Stabilization of Employment of Elderly Persons in March 2013 made it mandatory for employers to ensure employment security for workers until age 65 for those who wished to continue. However, the change did not require that they be kept in their most recent job. Additionally, Japan changed its pension law to gradually raise the pension entitlement age. Currently it is 62 for men, and will reach 65 in Fiscal Year 2025. (For women these changes are delayed by five years.)

An article in *Japan Labor Issues* reports and comments on a recent case that applied the Act on Stabilization of Employment of Elderly Persons to a situation involving a clerical employee whose former employer, upon his retirement, offered him part-time cleaning work. Ruling that this offer did not satisfy the Act, the regional high court observed that the offer indicated an intention to propose work that would cause a feeling of humiliation giving the employee no option but to take retirement. The court explained that the Act’s requirement of an offer of “re-employment” is not satisfied if the proposed position involves an unacceptably low level of wages or a job content utterly unacceptable to the worker in light of social norms, adding: “If two job types belong to completely different job categories, they would already lack substance as continued

Employment.” [Reported by K. Hamaguchi , “Job Changes for Re-employed Retirees *The Toyota Motor Case* Nagoya High Court (Sept. 28, 2016) 1146 Rohan 22.]

Stuart Basefsky has called our attention to a new data base of national labor, social security and related human rights legislation. It is sponsored by the International Labor Organization and contains over 88,000 with full texts or abstracts of legislation and citation information records covering 196 countries and over 160 territories and subdivisions. These are indexed by subject classifications. It is called: NATLEX--DATABASE OF NATIONAL LABOUR, SOCIAL SECURITY AND RELATED HUMAN RIGHTS LEGISLATION and can be found at:

<http://www.ilo.org/dyn/natlex/natlex4.home>

Up-date- Bărbulescu v. Romania

A recent issue of ADAPT carried a link to an article by **Lorna Woods**, Professor of Internet Law, University of Essex, respecting *Bărbulescu v. Romania*, case 61496/08, decided by the Grand Chamber of the European Court of Human Rights.

The claimant, Mr. Bărbulescu, was employed as a sales engineer for a private sector employer that had a rule stating: “It is strictly forbidden to disturb order and discipline within the company’s premises and especially ... to use computers, photocopiers, telephones, telex and fax machines for personal purposes.” As part of his job, Bărbulescu opened a Yahoo messenger account in his name for the purpose of responding to client inquiries. Unknown to him, his employer monitored the account and discovered that some of his communications were purely personal exchanges with his fiancée and his brother, including subjects such as his health and sex life. He was dismissed from his job for violating the rule against personal use of computers.

After losing in the Romanian courts, the claimant appealed to the European Court of Human Rights on the ground that in denying him relief from the dismissal, the state courts had violated his privacy rights under the European Convention for the Protection of Human Rights and Fundamental Freedom.

If the case sounds familiar it is because the May 2016 issue of this Bulletin reported the decision of the Fourth Section of the European Court of Human Rights. That court held that an employer’s rule

against personal use of its equipment removed any reasonable expectation of privacy, that it was not unreasonable for the employer to engage in monitoring to verify that employees are carrying out their professional tasks, and that the dismissal related to the personal use of the equipment and not to the private content of his personal communications. The Court also noted that Bărbulescu had not convincingly explained why he had used the Yahoo account for personal purposes.

This past August the Grand Chamber of the Human Rights Court reviewed and reversed that decision. It noted that of the 47 states that have adopted the European Convention on Human Rights, the laws of 34 require employers to give prior notice of monitoring to their employees. It also observed that although the Convention protects communications respecting private life, “the kind of internet instant messaging service at issue is just one of the forms of communication enabling individuals to lead a private social life.” Further, the Court reasoned that although the employee had been told he must not use the equipment for personal communications, an employer is not permitted to wholly eliminate private social life in the workplace. “Respect for private life and for the privacy of correspondence continues to exist, even if these may be restricted in so far as necessary.”

Accordingly, based on its analysis of the internationally accepted standards for protecting privacy, the Grand Chamber held that Romania has an obligation under the Convention to ensure that there are adequate safeguards against abuse by employers that monitor employee communications and that the adequacy of such safeguards must weigh: whether the employee has been notified of the possibility of employer monitoring, the degree of intrusion into the employee’s privacy, whether the employer has provided legitimate reasons to justify accessing the actual content of communications, whether less intrusive methods are available to meet the employer’s legitimate needs, and whether the consequences to the employee are proportional to achieving the employer’s needs. Because the Romanian courts had not weighed these factors, the Grand Chamber by a divided vote (there are 17 Chamber judges) decided that the employee’s Convention rights had been violated. Nevertheless, the Grand Chamber declined to award any damages stating: “The Court considers that the finding of a violation constitutes sufficient just satisfaction.” Bărbulescu was awarded €1,365 in costs and expenses.