

Today's Multi-layered Legal Order: Current Issues and Perspectives

Liber amicorum in honour of Arjen W.H. MEIJ

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Foreword

Arjen Meij and I became better acquainted in the two years (1998-2000) we were both judges in Luxembourg, he as a member of the then Court of First Instance, I as a member of the Court of Justice. We met regularly during these years, mostly at luncheon in the Court's restaurant, where we used to discuss matters of common concern, such as the sometimes troubled administrative relations between our two Courts, the visits by groups of Dutch judges, lawyers or students, the ways and means by which our Courts sought to contribute to the negotiations preparing the Nice conference and, last but not least, our experiences as judges in a multinational court.

These meetings were often productive and always instructive. I soon realized that my colleague was an outstanding example of the kind of 'reflective practitioner' Donald Schön had in mind when he wrote his book on this subject in 1983: 'a person who has acquired significant knowledge and skill (or 'art') relevant to a particular area, and who has developed the technique of learning continuously from his or her experience, and thus is able to solve problems which arise in complex, messy situations.' To put it briefly; I had met a judge by profession and by nature.

It is no wonder I was impressed, as rarely will a candidate have been so well prepared for a judgeship on the European level as Arjen Meij in 1998. At the moment of his appointment, he was a Justice of the Dutch Supreme Court. He had previously been a member, most recently vice-president, of the Dutch Trade and Industry Appeals Tribunal, which deals with administrative appeals in the field of economic law. Because of the relatively large number of cases in which European law is applied before that court, its members have ample opportunity to develop experience in applying that law. In the nineteen-eighties, knowledge of European law and its application was rare among Dutch judges, so the Trade and Industry Appeals Tribunal was lucky at that time to recruit a lawyer who had not only been a Lecturer in European law at the University of Groningen, but had also worked as a legal secretary for Judge Koopmans at the European Court of Justice in Luxembourg.

A distinguishing characteristic of Arjen Meij's 'reflectiveness' was the range and depth of his reflections. The subject of these reflections was not only his own experiences as a judge applying European law, but also the operation of the EU judicial system, national judiciaries included. Already while still in the Netherlands, he had been actively involved in actions (projects?) to anchor the European legal order in the national system of law by improving the training of national judges in European law and facilitating their access to its sources. During the twelve years he spent in Luxembourg, he refined his ideas as regards the best ways to do this in articles, interviews and speeches. Moreover, he focused on the problems raised by the working of the preliminary ruling procedure, a procedure threatening to become a victim of its success, to repeat a much quoted observation by Judge

Koopmans. He managed to introduce new elements in a seemingly worn-out debate and to put forward some innovative ideas about this issue. The high quality of his publications led to the prestigious invitation by the Netherlands Association of Jurists to present an introductory report for its 1999 general meeting on the relation of the Court of Justice and the Dutch legal order, and to his appointment, in that same year, to the G.J. Wiarda Guest Professorship at Utrecht University.

The fact that Arjen Meij retires from the General Court after having served two terms of six years on its bench presents an excellent occasion for his friends and colleagues to pay tribute to a 'reflective practitioner', who by his reflections, both as a judge and as a scholar, contributed substantially to the application of the law of the European Union and to the study of its judicial system. This collection of tributes marks a high point in Arjen's distinguished legal career. I know him well enough to bet that it will not mark the end of his willingness to impart to us the result of further reflections.

P.J.G. Kapteyn
The Hague
18 October 2010

Preface

'Judges are experts in relevancy!'

These are the words Arjen Meij used to describe the role of a judge. Throughout his 12 year tenure as a judge at the General Court of the European Union (previously, the Court of First Instance of the European Communities), Arjen Meij devoted himself to identifying the relevant legal and factual issues in cases regarding increasingly complex subject matters. Endowed with a broad legal culture that largely exceeded the boundaries of his day-to-day activities, and with a creative legal approach, he applied a sharp and rigorous analysis to the process of reviewing the legality of acts of the European Union submitted to the General Court.

Always concerned to safeguard the due process of parties appearing before the Court, Arjen Meij was well equipped to fulfil his judicial function at the General Court. In fact, his tenure as a judge at the General Court was nothing other than the natural outcome of his previous professional experience. Born in 1944, Arjen Meij graduated in law at Leiden University. He spent one year at the Amsterdam Chamber of Commerce (1970 – 1971), before becoming a lecturer in European law at the law faculty of the University of Groningen (1972-1979). He then joined the chambers of Judge Koopmans, as *référéndaire*, at the European Court of Justice (1980 – 1985) and subsequently embraced a career in the judiciary: he became a member of the Dutch Administrative High Court for Trade and Industry (*College van Beroep voor het Bedrijfsleven*) from 1986 to 1996 and of the Dutch Supreme Court (*Hoge Raad der Nederlanden*) from 1996 to 1998. Between 1998 and 2010, Arjen Meij sat as a judge at the General Court of the European Union. He has taught on a regular basis at Leiden University, the University of Luxembourg and Utrecht University.

The interweaving and interactions of today's legal orders – national, European and international – has been a topic of particular interest to Arjen Meij throughout his career. He has shown continuous awareness of the role of the national judge in the European system of judicial protection and of the relationship between national courts and the Court of Justice of the European Union. As a result of his advocacy, the 'Eurogroep' and the 'Gerechtscoördinatoren Europees Recht', part of the so-called 'Eurinfra' project, were established. These two networks bring together judges from the various jurisdictions within the Netherlands to foster awareness of European Union law within the day-to-day application of the law by Dutch judges. The interweaving and interactions of today's legal orders was also a central theme of his inaugural lecture held at Utrecht University on 29 May 2009, where he shared his reflections on the role of the judge in today's multi-layered legal order and, in particular, on the relationship between national

(constitutional) courts, the Court of Justice of the European Union and the European Court of Human Rights.¹

This Liber Amicorum intends to further investigate some aspects of this theme, while also considering specific issues related to recent developments in the field of EU law. It does so from multiple angles and perspectives thanks to the varied backgrounds of the twenty-three contributors. They are magistrates, academics and lawyers from the private practice.

The exploration that is embarked upon in this Liber Amicorum is not only one of looking back or reflecting on the past, with classic judgments such as AETR, Cilfit and Tedeschi constituting the starting point of legal analysis, but mostly one of looking forward. The contributions contain striking views on the future development of our multi-layered legal order and they address the challenges that the Court of Justice of the European Union, and more specifically the General Court, is likely to face in the future. This book provides, for instance, interesting insights into the development of judicial protection in the European Union and the enforcement of European law at the national level. It also deals with the application of the notion of 'transparency' within the case law and further explores the concept of 'public interest'.

Given the timeframe within which this Liber Amicorum was compiled, it is no surprise that the Treaty of Lisbon features prominently in many of its contributions. For example, light is shed on the powers conferred to the European Union as regards criminal law and its enforcement, as well as on the extension of the competences of the European Union to conclude international agreements. The position of fundamental rights under 'Lisbon', and related questions of jurisdictional collision where their application concerns the Court of Justice of the European Union and the European Court of Human Rights, is also investigated.

We wholeheartedly thank the authors for contributing, through their participation in this book, to a process of reflection which, undoubtedly, still has a long way to go. Last but not least, it has been an honour and a great pleasure to be part of the chambers of Arjen Meij and it is in a spirit of gratitude and friendship that, together with the authors, we offer him this Liber Amicorum.

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1. 'Circles of coherence: On unity of case-law in the context of globalisation', *European Constitutional Law Review* 1 (2010) pp. 84-101.

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