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Autonomie van de nationale rechter in het Europees recht: een verkenning van de praktijk aan de hand van de Nederlandse Europeesrechtelijke rechtspraak over de vestigingsvrijheid en het vrijedienstenverkeer

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SUMMARY IN ENGLISH

In the administration of justice within the European Union, national courts play a vital role. One that is not always acknowledged in its true proportions. In European law scholarship, there is a tendency to primarily focus on the formal duties of national courts in the field of European law (what national courts should do and how they should deliver judgments in the light of European law). Such a focus strengthens the impression that a national court is no more than a *bouche de la loi*, but is that really the case? Such a narrow view distracts us from the position of the national courts and the specific role national courts actually play in European law and in the European Union's judicial system.

This study researches the phenomenon of national judicial autonomy in European law in practice against the background of the European Union's judicial system. In the application and interpretation of European law, national courts are allowed considerable room for manoeuvre. For the purpose of this study, the Dutch European law case-law on the freedom of establishment and the free movement of services between 1975-2008 have been analysed.

The first chapters (prologue and chapter 1) provide a general introduction to this study, its research methods and restrictions. Chapter 2 consists of a theoretical framework for national judicial autonomy. Firstly, it discusses the position of national courts in European law against the background of the European Treaties, the case-law of the European Court of Justice and literature from legal scholarship. Secondly, it devises a broad concept of the autonomy of national courts in European law in practice: a judicial freedom restricted by the national procedural law context in which the judge operates, the principle of equivalence and the principle of loyal cooperation.

Chapter 3 analyses elements of national judicial autonomy in the context of the substantive interpretation and application of the freedom of establishment and the free movement of services. The chapter follows the structure of the freedoms: it starts with their personal, substantive and geographic scope, followed by the prohibition of impediments of the freedoms. Finally, the possibilities of justification and the principle of proportionality are discussed. This is all illustrated with examples from the Dutch European law case-law. The chapter demonstrates how for instance that the direct effect of a substantive right fades into a procedural question before a national court. Herewith, the question is raised if the classic distinction between substantive rights and procedural autonomy is valid for the understanding of the life of the law.

The main topic of chapter 4 is the law on the preliminary reference procedure. The chapter demonstrates various aspects of national judicial autonomy. Firstly,

it discusses several conditions which are of explicit or more implicit importance for judgments by the Dutch courts on the question if the preliminary reference procedure is necessary to give judgment. Secondly, the focus is on the existential question of the preliminary reference procedure: to refer or not to refer; on the use of the exceptions to the obligation to refer for courts in final instance and on the autonomy of national courts in drafting the question. Thirdly, the chapter discusses examples of the practice in which the Court of Justice has given its preliminary ruling and a national court has to give its final ruling: is it purely application of the preliminary ruling by a national court or does the national court give further interpretation?

Chapter 5 discusses the concept of national European law precedents: interpretations of European law by a national court, which have precedential value in, at least, the national legal context. First this concept is further explored. Secondly, different examples extracted from the analysed case-law are discussed. Thirdly, the chapter considers the existence and the meaning of these national European law precedents.

Chapter 6 contains concluding observations. It provides a summary of the main findings, identifies various specific characteristics of the autonomy of national courts in European law in practice and elaborates on the authority of national European law case-law in the European Union's judicial system. Finally, some recommendations are being made.