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Justice for both

Effective judicial protection under Article 47 of the EU Charter of Fundamental Rights and the Unfair Contract Terms Directive

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This thesis was finished during a global pandemic that put everything upside down. It disrupted our daily routines; I took social distancing to the next level by spending almost all my time between the same four walls of my office/living room, writing, teaching and having the occasional Zoom coffee or ‘quarantini’. But also and more importantly, it disrupted the economy, the justice system and, of course, health care. My sister Belle is the medical doctor in the family, so let me stick to my own area of expertise: civil procedure. Courthouses closed, making access to court physically impossible. All kinds of procedural questions emerged, such as how service of process or an oral hearing is supposed to take place if the parties cannot come near each other. New challenges also provided new opportunities, in particular digitisation of the proceedings, which seemed very complicated before but out of necessity became possible almost overnight. Crisis as a catalyst of procedural innovation – a phenomenon that resonates with the findings of my PhD research. I have analysed cases that arose in the aftermath of the credit crunch of 2007/2008, which exposed many bottlenecks in the civil justice system as well. When I started this project, I noticed that many preliminary references to Luxembourg concerned Article 47, especially in unfair terms cases. It turned out that national courts could not always provide effective judicial protection, even where consumers urgently needed it: in mortgage and debt collection cases with a huge impact on their lives. The rain did not only stay in Spain. In other countries, including my own, there were issues too, as the example of e-Court shows. As a litigator in a big law firm, I had hardly any first-hand knowledge of the problems people experience with access to justice, but I had observed the growing importance of EU law and fundamental rights, also in purely national matters between private parties. My interest was sparked: what role could the recognition of effective judicial protection as a fundamental right play in this respect?

In my first year as a law student in Leiden, the late professor Schermers taught me that fundamental rights must not only exist in theory, but also operate effectively in practice. After him, many others followed who inspired me to study law as a discipline with a strong practical and societal dimension. Being a student assistant for Rikki Holtmaat, with her many talents and huge network, stirred my academic ambition and social engagement. Both my parents are academics, but

they have always encouraged Belle and me to learn a profession. My first step was to become an attorney,¹²²⁴ where I gained invaluable insights on the functioning of our civil justice system. But I am a researcher at heart and I could never seem to find enough time for critical reflection. Therefore I went back to school. Since then I have come a long way, both personally and professionally. It has taken me one year to figure out the scope of my project; one year of getting familiar with the Spanish legal system and publishing my first article on the topic; one year of analysing my findings and devising the structure of my thesis; and over a year of actual writing while also teaching, partly in lockdown. In the meantime Article 47 gained traction; I was invited to participate in various projects and present several papers, which have helped me beyond anything else to find my own voice.

The road to a PhD might be long, but I did not walk it alone. To Chantal Mak, my promotor, I owe the opportunity to embark on this adventure when she invited me, together with Laura Burgers and later Fien de Ruiter and Betül Kas, to form the ‘Judges in Utopia’ team with her. I would like to thank her and Joasia Luzak for their advice and support throughout the process, and for their confidence in me. I am also grateful to my colleagues at the University of Amsterdam, who incited me to grow as an academic, and the students who have enriched my academic life. Special thanks to Candida Leone (my *paranimf* and trusted advisor), Mirthe Jiwa and Irina Domurath, without whom the book would not be what it is today. They pushed me to be more creative and bold (1.224 footnotes is still reasonable, no?). I hope corona will not stop us in the future from discussing law and life in general, preferably over margaritas.

To the members of my committee, Marco Loos, Aukje van Hoek, Ruth de Bock, Fabrizio Cafaggi and Esther Arroyo Amayuelas: I am very glad that you took the time to read my book over the summer and I look forward to sharing further thoughts with you on our mutual research interests. I would also like to thank the scholars who were willing to discuss my research with me, in particular Charlotte Pavillon, Bart Krans, Carla Sieburgh, Padraic Kenna, Elise Muir, Rob Widdershoven, Marieke Oederkerk, Hanna Schebesta, Mateusz Grochowski, Janek Nowak, Ruben

¹²²⁴ Despite the warning from Rebecca Bunch, Rachel Bloom’s alter ego and my spirit animal: “Don’t be a lawyer!” (feat. Burl Moseley), I would recommend all law students to work in practice and/or follow my ALP course.

de Graaff, Irene Aronstein and Tim Staal. At a crucial stage in my research, I found myself surrounded by welcoming colleagues at the Universitat Pompeu Fabra, in particular Carlos Gómez Ligüerre, Fernando Gómez Pomar, Aida Torres Pérez, and my roommates Giulia Giovannini and Sergi Morales Martínez. My friend Rosa Barceló Compte has often hosted me in Barcelona and introduced me to her colleagues at the UB Facultat de Dret: Esther Arroyo, Vicente Pérez Daudí and Mariló Gramunt Fombuena, amongst others. I have also had the pleasure of meeting and talking to José Maria Fernández Seijo, Sandra Lange, Herman van Harten, Roland de Moor and other judges who adjudicate the type of cases I write about.

For me, being part of an active research and teaching community is one of the most important perks of working in academia. Aart Jonkers and Beatrijs van Schilfgaarde – who have adopted Irina and me as their roommates – deserve a honourable mention here. Sacha Tamboer (my other *paranimf*) took me under her wing the first time I set foot at the Poort and felt quite lost. Our move to Roeterseiland coincided with my moving house to Amsterdam. Only then I truly felt at home; in Oost (where I was born), in the department of Private Law and in our research centre, with Marija Bartl as its new director. Iris van Domselaar, Rolef de Weijs and Rolf Ortlep, it is great to have you as sparring partners as well. Natali Helberger, Joris van Hoboken and Naomi Appelman, thanks for including me in the ‘Digital Transformation of Decision-Making’ initiative. I would also like to mention the BPR team: Robert Hendrikse, Reinier Groos, Jeroen Heuving and René Klomp, who all love procedural law as much as I do. The training I received at Pels Rijcken still proves to be indispensable, and I have good memories of my cooperation with Willem Heemskerk (my *patroon*), Meine Dijkstra, Wemmeke Wisman, Karlijn Teuben, Berend Jan Drijber and many other inspiring people. Roos Lawant, Marleen Holthuis and Gytha Schoemaker, I miss spending all those hours with you in and outside the office, just as I miss the courtroom sometimes.

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