PREFACE

Fundamental Rights and Principles. Pieter van Dijk has dedicated his working life to these values. And what an impression he has made on many people by doing so! The portraits and essays in this Liber Amicorum speak for themselves.

We are indebted to Herman Tjeenk Willink, former Vice-President of the Council of State, and Erik Visser, Secretary General of the Council of State, for giving us the go-ahead when we first presented our plans for this book in the Summer of 2011. We are equally indebted to Piet Hein Donner, present Vice-President of the Council of State, who has supported this project since taking up office.

Warm words of gratitude we would like to express towards Adriëlle Baars-Schuyt and Laura Henderson who often worked miracles through revision and translation respectively. It was a real pleasure to work with them. Marjolein Slaaf-Hanssen and Marloes van Loon provided valuable support along the way, which they are cordially thanked for. Finally, we would like to thank Kris Moeremans at Intersentia for the craftsmanship with which he has involved himself in this project. On sending the manuscript to him and his staff, we have every faith in the final result.

Our final words are for Pieter van Dijk. We do hope to honour him with the essays in this volume, a hope we share with all contributors, wishing him rich memories of his working life, many hours of interesting reading and every happiness for the future.

25 September 2012

Marjolein van Roosmalen
Ben Vermeulen
Fried van Hoof
Marten Oosting
CONTENTS

Preface .............................................................................................................. v
Biography Pieter van Dijk .................................................................................. xxi
Bibliography Pieter van Dijk ............................................................................. xxiii

I. PIETER VAN DIJK

Pieter van Dijk: the Person
Joke van der Meer ......................................................................................... 3

Pieter van Dijk: the Scholar. Recalling a ‘Wide-ranging Study of
Comparative Jurisprudence’
Jos Kapteyn ................................................................................................. 9

Pieter van Dijk: the State Councillor and Human Rights Lawyer.
Preconditions for Safeguarding Fundamental Rights
Erik Visser and Annerie Verbeek ............................................................... 17

1. Introduction ............................................................................................... 17
2. The Council of State: Its Tasks and Contexts ......................................... 18
3. Acting Vice-President and Chair of the Constitutional Law
Committee ..................................................................................................... 21
4. President of the Administrative Jurisdiction Division .......................... 22
   4.1. Reducing Turnaround Times ............................................................. 23
   4.2. Accessibility and Predictability of Judgments ................................. 26
   4.3. Judicial ‘Lawmaking’ ........................................................................ 28
   4.4. Cooperation with the Joint Court of Justice and Developments
        in the Area of Mediation and the Right of Complaint within
        the Administrative Jurisdiction Division ........................................... 29
4. Conclusion .................................................................................................. 31
# Contents

## II. STRASBOURG

The Concurring and Dissenting Opinions of Pieter van Dijk as a Judge of the European Court of Human Rights

Fried van Hoof and Leo Zwaak ................................. 35

1. Introduction ......................................................... 35
2. The Interpretation and Application of Article 6 of the Convention ........ 36
   2.1. Anonymous Witnesses ........................................ 36
   2.2. Objective Impartiality .......................................... 37
   2.3. Adequate Time and Facilities for the Preparation of the Defence ... 38
   2.4. Absence of an Oral Hearing ................................... 40
3. Article 8 of the Convention ...................................... 41
   3.1. Transsexualism .................................................. 41
   3.2. Expulsion and the Right to Family Life ....................... 43
5. Article 10 of the Convention: Freedom of Expression ............. 45
   5.1. Freedom of Expression in a Democratic Society ............... 45
   5.2. Proportionality .................................................. 46
6. Exhaustion of Domestic Remedies .................................. 47
7. Conclusion .......................................................... 48

Pieter van Dijk and His Favourite Strasbourg Judgment. Some Remarks on Consensus in the Case Law of the European Court of Human Rights

Egbert Myjer .......................................................... 49

1. Introductory Remark .............................................. 49
2. The Christine Goodwin Case ...................................... 50
3. The Notion of Consensus and Margin of Appreciation and the Brighton Declaration ................................................. 56
4. Interpretation and Application of the Convention .................... 57
5. The Interpretation Given by the Court also of Importance for Other High Contracting Parties ..................................... 59
6. Interpretation Methods Used by the Court .......................... 60
7. Consensus in the Case Law of the Court ............................ 61
8. How Does the Court Determine Consensus? .......................... 69
9. Concluding Remarks ................................................ 70

Judicial Minimalism and 'Dependency'. Interpretation of the European Convention in a Pluralist Europe

Janneke Gerards ...................................................... 73

1. Introduction ........................................................ 73
2. Autonomous and 'Dependent' Interpretation .......................... 77
2.1. Autonomous Interpretation and Its Risks .................................. 77
2.2. ‘Dependent’ Interpretation and the Value of Flexibility ............... 79
   Deliberate Choice for a Non-autonomous Approach ................. 80
   Dependency, or the ‘in for a Penny, in for a Pound’ Approach .... 81
   Conclusion ........................................................................... 82
3. Judicial Minimalism: Shallow, Narrow and Analogical Reasoning ..... 83
   3.1. Shallow Reasoning ......................................................... 83
   3.3. Narrow Reasoning, Analogical Reasoning and General Principles . 86
   3.4. Disadvantages of Judicial Minimalism ............................. 88
   3.5. Conclusion ....................................................................... 89
4. Conclusion .............................................................................. 90

Switzerland before the European Court of Human Rights
Giorgio Malinverni ................................................................. 93

The Impact of the Case Law of the European Court of Human Rights
on the Political Debate in the Netherlands concerning the Court
Martin Kuijer ........................................................................ 99
1. Introductory Comments ......................................................... 99
2. The Period of the Sleeping Beauty: 1950 till mid Nineteen Seventies . 101
3. The Court’s Awakening: The Nineteen Eighties and Nineties ....... 104
5. Concluding Comments .......................................................... 112

Environmental Protection under Article 8 of the European Convention
on Human Rights
Thijs Drupsteen .................................................................. 115
1. Some Recent Cases ............................................................. 115
   Deés v. Hungary ................................................................. 115
   Ivan Atanasov v. Bulgaria ................................................... 116
2. Criticism of the Strasbourg Court .......................................... 118
3. Environmental Cases under Article 8 of the Convention ........... 120
   Lopez Ostra v. Spain .......................................................... 120
   Guerra v. Italy ................................................................. 121
   Hatton v. the United Kingdom (the Heathrow case) ............... 122
   Kleyn and Others v. the Netherlands (the Betuweroute case) .... 123
   Taskin and Others v. Turkey ................................................. 124
   Moreno Gómez v. Spain ..................................................... 124
   Fadeyeva v. Russia ............................................................ 125
   Giacomelli v. Italy .............................................................. 125
   Tatar v. Romania ............................................................... 126
State Obligations to Adequate Judicial Response in Cases under Article 2 of the Convention. Issues of Admissibility

Zdravka Kalaydjieva

1. The Positive Procedural Obligations of National Authorities under Article 2 of the Convention

2. The Rights to Effective Remedy and Access to Court and the Positive Obligation to Judicial Response

3. Admissibility Criteria
   3.1. Manifestly Ill-founded Complaints
   3.2. Failure to Exhaust Domestic Remedies
   3.3. The Ex Officio Nature of the Investigation and the Requirements of Article 35
   3.4. Victim Status in the Convention Proceedings

III. LUXEMBOURG

Access to the European Union Courts. Standing in Direct Actions after Lisbon

Arjen Meij

1. Introduction

2. From Plaumann to Jegho-Quéré, UPA and Lisbon

3. First Applications: Inuit and Microban

4. Final Observations

The Role of the European Parliament in the Fundamental Rights Architecture of the European Union

Johan van Haersolte and Jan-Kees Wiebenga

1. Introduction

2. The European Parliament from the Nineteen Fifties to the Nineteen Eighties: an Actor in Search of a Script

3. The European Parliament from the Nineteen Eighties to the Present: Bringing Fundamental Rights Home

4. The European Parliament: with a Little Help from Its Friends
5. The European Parliament after Lisbon: Staying Alert ...................... 168
6. Review and Appraisal ............................................................. 170

IV. BETWEEN STRASBOURG, LUXEMBOURG AND THE HAGUE ................ 173

The European Convention on Human Rights and the Charter of Fundamental Rights of the European Union: Back to the Roots
Kamiel Mortelmans and Hanna Sevenster ........................................... 175

1. Sources of Human Rights: Competition and Cooperation ............... 175
   1.1. Introduction ....................................................................... 175
   1.2. Added Value of the Charter Compared to Other Sources of Human Rights .................................................. 176
   1.3. Competition and Cooperation ........................................... 177
2. Rethinking (the Sources of) Human Rights Within the Council of State ............................................................................. 178
3. Human Rights Addressees .............................................................. 180
   3.1. The Case Law Before the Entry into Force of the Legally Binding Charter .................................................. 180
   3.2. The Case Law After the Entry into Force of the Charter .......... 181
   3.3. The Evolution of the Administrative Jurisdiction Division’s Case Law on Public Authorities Invoking the Convention .... 182
       The Place of Article 34 of the Convention (the Right of Individual Petition) .................................................. 184
       The Unique Character of the Convention ......................... 185
       The Nature of the ‘Public Authority’ .................................. 185
   3.4. The Administrative Jurisdiction Division’s Case Law Regarding the Charter and Public Authorities ..................... 186
       The Right of Application of Public Authorities within the European Union System .................................. 186
       The Unique Character of the European Union System ......... 187
       The Character of the ‘Public Authority’ .......................... 187
4. The Ability to Invoke Certain Provisions (Direct Effect) .................... 188
   4.1. Direct Effect within Union Law ........................................... 188
   4.2. Direct Effect and the Constitution of the Netherlands: Convergence? .................................................. 190
5. Back to the Roots ........................................................................ 193
   5.1. Pieter van Dijk’s Academic Roots ....................................... 194
   5.2. Back to Pieter van Dijk’s Academic Roots ......................... 195
V. VENICE

The Venice Commission Twenty Years On. Challenge Met but New Challenges Ahead
   Gianni Buquicchio and Simona Granata-Menghini ................. 241
1. The Original Challenge .............................................. 241
2. The Venice Commission ............................................. 242
3. The Venice Commission’s Advice ................................... 246
4. The Venice Commission’s Role ..................................... 249
5. The Venice Commission’s Future ................................... 252
6. Pieter van Dijk’s Contribution to the Venice Commission ....... 253

The Venice Commission and the Protection of Human Rights
   Finola Flanagan ......................................................... 255
1. Introduction ............................................................ 255
2. Freedom of Assembly .................................................. 257
   2.1. Advance Notification ............................................ 261
   2.2. Location ........................................................... 262
   2.3. Blanket Restrictions ............................................. 263
   2.4. Guaranteeing Human Rights .................................... 263
   2.5. Review and Appeal ............................................... 264

VI. THE KINGDOM OF THE NETHERLANDS IN EUROPE AND OVERSEAS

Fundamental Rights in the Countries of the Kingdom of the Netherlands: Unity or Diversity?
   Jaime Saleh ............................................................. 269
1. Introduction ............................................................ 269
2. Fundamental Rights: Democracy, Good Governance and Human Rights ............................................. 269
3. The Safeguarding of Fundamental Rights in the Kingdom of the Netherlands ............................................. 273
4. Unity in Diversity ........................................................ 275

Concordance in Administrative Law and the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba
   Ton Bijloos, Rob Loeb and Joop Drop ............................... 277
1. Introduction ............................................................ 277
2. The Principle of Concordance ........................................ 280
3. The Principle of Concordance and the Lar Court
   3.1. *Ne-Bis-In-Idem* Principle
   3.2. *Brummen*
   3.3. Compensation Orders
   3.4. Analogue Application Not Acceptable in Cases Where the General Administrative Law Act and Lar Differ
   3.5. Article 20 of Chapter 6 of the General Administrative Law Act
   3.6. Article 22 of Chapter 6 of the General Administrative Law Act
   3.7. Articles 18 and 19 of Chapter 6 of the General Administrative Law Act

4. Amendment of the Lar Netherlands Antilles
5. Administrative Procedure on the BES Islands
6. Conclusion

**The Customisation Principle in the Council of State’s Advisory Opinions**
Rein-Jan Hoekstra and Arnold Weggeman

1. Introduction
2. Customisation Within One Legal Order
3. Customisation in the International Context
4. Customisation in European Cooperation
5. Customisation in Regard to Cooperation Within One Kingdom Country
6. Conclusion

**VII. ON PRINCIPLES AND RIGHTS FROM VARIOUS PERSPECTIVES**

**The Status of General Principles of Law in the Legal Practice of the Netherlands. Some Observations**
Evert Alkema

1. Introduction
2. The Concept of Legal Principles
3. Focus of this Paper
4. International Legal Principles or ‘General Principles of Law Recognized by Civilized Nations’
5. International Legal Principles in Dutch Constitutional Law and Doctrine
6. Domestic Legal Principles in Dutch Constitutional Law
7. The Court of Cassation’s View on Legal Principles in its 1989 and 2009 Judgments
8. Principles in the Legal Practice of some Special Fields of Dutch Law
9. Concluding Remarks .............................................................. 325
   9.2. Is Constitutional Change Necessary? .............................. 326

The Development of General Principles of Good Governance in Dutch Administrative Case Law
   Jaap Polak ................................................................. 329

1. Introduction ................................................................. 329
2. The Compensation Idea .................................................. 330
3. General Principles Before General Administrative Jurisdiction:
   Emphasis on Substantive Requirements of Decisions ............... 331
4. Review Against General Principles of Good Governance after the
   Arrival of General Administrative Jurisdiction: Dominance of
   the Principle of Careful Preparation and the Duty to Give Sufficient
   Reasons ................................................................. 336
6. Parallels with the Development of Review Against Provisions from
   the European Convention on Human Rights? ...................... 342
7. Finality as Solution? ....................................................... 343

The Principle of Legality Revisited
   Piet Hein Donner .......................................................... 345

1. Introduction ................................................................. 345
2. Thirty Years of Debate ...................................................... 346
3. Regulation and Legislation ............................................... 347
4. A Self Sustaining Process ................................................. 349
5. The Principle of Legality .................................................. 350
6. The Principle Revisited ................................................... 353

Fundamental Rights and Principles from an Attorney’s Perspective
   Arjen van Rijn ............................................................. 359

1. Introduction ................................................................. 359
2. Assistance of an Attorney as Another’s Fundamental Right .... 360
3. Where the Subjective Rights of the Client and of the Attorney Meet:
   Attorney-Client Privilege ............................................... 364
4. The Attorney’s Freedom of Expression ................................ 367
5. The Attorney as a Subject of Fundamental Rights ................. 369
6. Fundamental Rights as a Ground of Dispute ......................... 370
7. Do Attorneys Have a Public Function? ............................... 371
8. Conclusion ................................................................. 374
The Inter-American Commission of Human Rights and the Inter-American Court. New Rules for Individual Communications

Cecilia Medina Quiroga ................................................................. 377

1. Introduction ................................................................. 377
2. A Glimpse at History ......................................................... 378
3. The Changes in the Rules of Procedure of Court and Commission before 2009 ......................................................... 380
4. The 2009 Amendments of the Rules of Procedure of the Inter-American Commission of Human Rights and the Inter-American Court; the Catalysts ......................................................... 382
5. The Process of Amending the Rules of Procedure ................. 385
6. The Amendments Proper .................................................... 386
   6.1. The Amendments of the Commission’s Rules of Procedure 386
   6.2. The Amendments in the Court’s Rules of Procedure ............ 387
7. New Aid for Victims ......................................................... 391
8. Conclusions ................................................................. 393

Freedom of Religion or Belief is an Asset

Bahia Tahzib-Lie ................................................................. 395

Prologue ................................................................. 395
1. Introduction ................................................................. 396
2. Internal Freedom of Religion or Belief and Challenges in Practice .... 398
   2.1. Free and Alterable Choice of the Individual ...................... 398
   2.2. Coercion Impairing Free Choice and Criticism of Religion
        and Belief ................................................................. 402
3. External Freedom of Religion or Belief and Challenges in the
   Public Sphere ................................................................. 405
   3.1. Manifestations of Religion or Belief and Permissible Restrictions . 405
   3.2. Challenges Related to Diversity in the Workplace and Personal
        Use of Religious Symbols .................................................... 408
4. Concluding Remarks .......................................................... 413
Epilogue ................................................................. 415

Freedom of Conscience and Tolerance in the Dutch Cultural Tradition

Kees Schuyt ................................................................. 417

1. Freedom of Conscience as a Human Right .............................. 417
2. The Place of Conscience in the Dutch Cultural Tradition .......... 418
3. The Concept of Conscience ..................................................... 421
The Rule of Law and Violations of Law in Police Investigations.
Protecting the Embankments around Article 8 of the European Convention on Human Rights

Geert Corstens and Reindert Kuiper ........................................... 431

1. Landslides in the Area of Law Enforcement ................................. 431
2. Shifting Responsibility ............................................................... 433
3. ‘Van Dijk’s’ Test of the Rule of Law and Violations of Law in Police Investigations ............................................................... 434
4. Development of the Criminal Trial Judge’s Review of Lawfulness .... 436
5. The Convention as a Review Mechanism ....................................... 439
   5.1. Article 6 of the Convention .................................................... 439
   5.2. Article 8 of the Convention .................................................... 440
6. A Practical and Effective Article 8 of the Convention ....................... 441
7. Inspiration from the United States of America ............................... 443
8. Conclusion ..................................................................................... 445

The Effect of Article 8 of the European Convention on Human Rights on Dutch Family Law

Sylvia Wortmann ................................................................. 447

1. Family Law and Child Law: Permeated by Fundamental Rights ........ 447
2. Family Life: The Facts Determine the Law ..................................... 448
   2.1. Family Life According to Dutch Law but Not According to European Law ............................................................... 449
   2.2. Direct Application of Court’s Case Law Regarding the Existence of Family Life ....................................................... 451
4. Effect of (Positive) Obligations of Dutch Family Law ....................... 454

Article 8 of the European Convention on Human Rights. Proportionality and the Protection of Personal Data

Luc Verhey and Mathijs Raijmakers ............................................. 459

1. Introduction ................................................................................. 459
2. The Proportionality of Data Processing ......................................... 462
   2.1. Article 8(2) of the Convention: A General Overview ............... 462
   2.2. Article 8(2) of the Convention: the Proportionality Test ............ 463
       Nature of the Data .................................................................. 465
       Status of the Individual Involved ............................................ 465
       Intrusiveness of the Interference ............................................. 466
       Effective Control .................................................................. 467
       Measures to Prevent Abuse .................................................. 468
   2.3. European Union Law .............................................................. 468

Intersentia xvii
3. The Legislature and the Proportionality Test
   3.1. Introduction
   3.2. The Proportionality Test in the Legislative Process
       Nature of the Data
       Intrusiveness of the Interference
       Effective Control and Preventing Abuse
   3.3. Closing Remark: the Proportionality Test as a General Framework
4. Conclusion

Reasonable Legislation. A Matter of the Rule of Law and Human Rights
Anna Jasiak
1. Introduction
2. Rationalities in a Legislative Process
3. Reasonable Legislation
   3.1. Substantive Reasonableness
       European Convention on Human Rights and the Notion of Law
       Legal Certainty: Accessibility and Predictability
       Legal Certainty: Retrospectivity
       Legal Certainty: Consistency and Stability of Legislation
       Equality Principle
       Generality of Laws
   3.2. Procedural Reasonableness
       Proportionality Principle
       Debate/Weighing of all Interests
       Hasty Legislation/Timing
4. Conclusion

The Right to Information under the European Convention on Human Rights
Eric Daalder
1. Introduction
3. Article 10 of the Convention: A General Right to Information?
4. Conclusion

Fundamental Rights, Fundamental Principles and Local Governments
Hubert Hennekens
1. Introduction
2. The Phenomenon of Local Government
3. Is There a Fundamental Right of Existence for Municipalities? .......... 514
4. The Right of Existence of the Municipality and the Municipality’s Significance as a Government ................................................. 517
5. How Does One Determine and Guard the Interests that Are to Be Pursued? ................................................................. 519
6. Perspectives on the Right of Recourse to a Judicial Authority in Order to Secure Local Autonomy ........................................... 522

VIII. CONSTITUTIONAL REVIEW

The Priority Constitutional Review and Its Relationship to the Preliminary Reference Procedure
Richard Lauwaars. ................................................................. 527

Preface ................................................................. 527
1. Introduction ......................................................... 528
   1.1. Priority Constitutional Review ........................................ 528
   1.2. Some Numerical Data .................................................. 528
   1.3. Relationship with the Preliminary Reference Procedure .......... 529
2. Background ......................................................... 529
   2.1. Article 26(4) of the Belgian Special Law for the Constitutional Court ......................................................... 529
   2.2. The Origin of Priority Constitutional Review ...................... 530
   2.3. The Constitutional Council: Composition and Competencies ......................................................... 531
3. The Melki Case ....................................................... 532
   3.1. The Facts ............................................................. 532
   3.2. The French Court of Cassation ...................................... 533
   3.3. The French Constitutional Council and the Council of State’s Reactions: the Councils Strike Back .................................. 534
   3.4. The Judgment of the Court of Justice of the European Union ......................................................... 535
       Rejection (paragraphs 40–47) ......................................... 535
       Interpretation in Conformity with the Treaty (paragraphs 48–53). 536
       Directives (paragraphs 54–56) ...................................... 536
       Conclusion ............................................................ 537
4. Comments ........................................................... 537
   4.1. Main Issue: The Relationship Between Priority Constitutional Review and the Preliminary Reference Procedure ............... 537
   4.2. Implementation of Directives ........................................ 539
5. Conclusory Remarks .................................................. 541
   5.1. The Final Decision of the Court of Cassation ...................... 541
   5.2. Lessons for the Netherlands? ........................................ 541
   5.3. The French Constitutional Council and the German Federal Constitutional Court ......................................................... 542

Intersentia xix
Quis custodiet ipsos custodes? About the Institutional Position of Constitutional Courts

Willem Konijnenbelt ........................................................................................................................................ 543

1. Introduction ........................................................................................................................................... 543
2. The Federal Supreme Court of the United States of America ............................................................... 545
3. The Federal Constitutional Court of Germany ......................................................................................... 548
4. The French Constitutional Council ..................................................................................................... 551
5. The European Court of Human Rights ................................................................................................. 556
6. Final Remarks ........................................................................................................................................ 559

Constitutional Review by the Dutch Courts. A View from Kneuterdijk 22

Marjolein van Roosmalen and Ben Vermeulen ......................................................................................... 563

1. Introduction ........................................................................................................................................... 563
2. Dutch Constitutional Law and Fundamental Rights .............................................................................. 565
5. The Dutch Court System: A Diversity of ‘Constitutional Courts’ ....................................................... 574
6. Constitutional Judgments of the Administrative Jurisdiction Division; Some Reflections on the Council of State’s Constitutional Law Committee and its Chairman ......................................................... 578

List of Contributors ................................................................................................................................... 583
BIOGRAPHY PIETER VAN DIJK

1943 Born in De Lier, South-Holland, The Netherlands, on 21 February
1966 Master of Laws (Meester in de Rechten), State University of Utrecht
1967 Internship European Commission of the European Communities
1967–1976 Lecturer of the Law of International Organisations, State University of Utrecht; Senior-Lecturer from 1974 onwards
1976 Doctor of Laws (cum laude), State University of Leiden
1976–1990 Professor of the Law of International Organisations, State University of Utrecht
1978 Visiting Professor, Wayne State University Law School, Detroit, U.S.A.
1983 Fulbright Visiting Scholar, Columbia University, Harvard University, University of Michigan, U.S.A.
1990–2013 State Councillor, Council of State
1996–1998 Judge, European Court of Human Rights, Strasbourg
1999–2011 Member of the European Commission for Democracy through Law (Venice Commission)
2000–2003 President of the Administrative Jurisdiction Division of the Council of State
2006–2010 President of the Administrative Jurisdiction Division of the Council of State
2009–2013 Chair of the Constitutional Law Committee of the Council of State

ADDITIONAL AFFILIATIONS (FORMER AND PRESENT)

Member of the Board of the Netherlands Institute for Peace Issues;
President of the Advisory Committee on Human Rights and Foreign Policy (Ministry of Foreign Affairs);
Member of the Advisory Committee on Issues of International Law (Ministry of Foreign Affairs);
Member of the Advisory Committee on Immigration Affairs (Ministry of Justice);
Biography Pieter van Dijk

Deputy Justice at the Court of Appeal The Hague;
Member of the Royal Netherlands Academy of Arts and Sciences;
Chair of the Netherlands Institute of Human Rights (SIM);
Vice-President of the Netherlands Helsinki Committee;
Member of the Advisory Board of the Netherlands Committee of Jurists for Human Rights;
Chair of the Netherlands Institute of Social and Economic Law;
Member of the Scientific Committee of the Netherlands Institute for Advanced Studies;
Member of the Scientific Committee of the T.M.C. Asser Institute;
Member of the Board of Editors of the Netherlands Quarterly of Human Rights;
Member of the Board of Editors of the Netherlands Quarterly of Grotiana;
Commentator Nederlandse Jurisprudentie [Dutch Case Law];
Staff Member Nederlands Juristenblad [Dutch Lawyers’ Journal];
Member of the Board of Editors of the Netherlands International Law Review;
Member of the Advisory Council of the Anne Frank House;
Member of the Advisory Council of Humanity in Action;
Member of the national group of the Permanent Court of Arbitration;
Member of the Dutch group of experts under the OSCE Moscow Mechanism;
Member of the board of the The Hague Prize for International Law;
Member of the jury of the Council of Europe Parliamentary Assembly Human Rights Prize;
Member of the Advisory Council of the European Union Agency for Fundamental Rights;
External Member of the Reference Group Policy Analysis Five Years Moscow Summit;
Substitute Member of the Joint Court of Justice of Aruba, Curaçao and Sint Maarten and of Bonaire, Sint Eustatius and Saba; and
Vice-President of the Constitutional Court of Sint Maarten
BIBLIOGRAPHY PIETER VAN DIJK

BOOKS AND OTHER SEPARATE PUBLICATIONS

as author:


4. *De Slotakte van Helsinki; Grondslag van een Pan-Europees Stelsel?* [The Final Act of Helsinki; Basis for a Pan-European System?] (inaugural lecture at Utrecht University), Kluwer, Deventer, 1980, 31 pp.;


7. *Advies Commissie Boukema over het doorgifteverbod van bepaalde op Nederland gerichte buitenlandse omroepprogramma’s tegen het licht van grondwettelijke bepalingen en internationale verdragen* [Report of the Boukema Committee concerning the Prohibition on the Relaying of Certain Foreign Programmes Specifically Intended for Dutch Audiences, in the light of the Dutch Constitution and International Treaties], advice to

---

1 Closing date: 1 January 2012.
the Minister of Culture, Recreation and Social Welfare, in cooperation with P.J. Boukema and E.A. Alkema, Rijswijk, 1982, 38 pp.;
9. The Right of the Accused to a Fair Trial under International Law, SIM Special No. 1, Utrecht, 1983, 76 pp.;
15. The Social Charter of the Council of Europe and the European Community; A Memorandum, Council of Europe, Parliamentary Assembly, Document 6138, Annex D, Strasbourg, 1989, pp. 11–31 (also published in French);


*as editor:*


8. *Bestrijding van rassendiscriminatie; internationale en nationale rechtsmiddelen* [Battle against Racial Discrimination; international and national legal remedies], Ars Aequi Libri – Rechten van de Mens, Vol. 6, Nijmegen, 1985, 130 pp.;


12. *Forty Years International Court of Justice: Jurisdiction, Equity and Equality* (in cooperation with A. Bloed), Europa Institute, Utrecht, 1988, 177 pp.;

13. *De relatie tussen wetgever en rechter in een tijd van rechterlijk activisme* [The Relation between Legislator and Judiciary in an Era of Judicial Activism], North Holland, Amsterdam, 1989, 120 pp.;


**CONTRIBUTIONS TO BOOKS**

1. ‘Diritto delle Comunità europee e diritto degli stati membri; Paesi Bassi’ [The law of the European Communities and the law of the Member States; the Netherlands], in P. van Dijk et al. (eds.), *Diritto delle Comunità europee e diritto degli stati membri* [The law of the European Communities and the law of the Member States], Collection Europa Una deel X, Ferro Edizioni, Milano, 1969, pp. 293–338;

2. ‘Belastingharmonisatie’ [Harmonization of Taxes], in *De Uitvoering van het Gemeenschapsrecht in de Nederlandse Rechtsorde* [The implementation of Community Law in the Netherlands], Vol. 1, T.M.C. Asser Institute, The Hague, 1972, pp. 91–119;


16. ‘Behandeling van vreemdelingen en het volkenrecht’ [Treatment of Aliens and Public Law] (in cooperation with R.M.A. Guldenmund), in *Gelijk geregeld; over de rechtspositie van duurzaam in Nederland verblijvende vreemdelingen* [On equal terms; on the legal status of aliens with permanent residency in the Netherlands], Ars Aequi, Nijmegen, 1984, pp. 156–175;

17. ‘La Constitucion Chilena a la Luz de los Compromisos Legales Internacionales de Chile en el Ambito de los Derechos Humanos’ [The Chilean Constitution in the Light of the International Legal Commitments of Chile in the Sphere of Human Rights], in *Constitucion de 1980; comentarios de juristas internacionales* [Constitution of 1980; Comments of International Lawyers], Ediciones Chile y America, Santiago de Chile, 1984, pp. 34–71;

18. ‘Het recht van de Westeuropese samenwerking en integratie’ [The Law of WestEuropean Cooperation and Integration], in *Van Apeldoorns Inleiding tot de Studie van het Nederlandse Recht* [Van Apeldoorn’s Introduction to the Study of Dutch Law], Tjeenk Willink, Zwolle, 1985, pp. 373–399;


20. ‘De Conventie inzake de uitbanning van alle vormen van rassendiscriminatie’ [The Convention on Elimination of All Forms of Racial Discrimination], in P. van Dijk (ed.), *Bestrijding van rassendiscriminatie; internationale en nationale rechtsmiddelen* [Battle against Racial Discrimination; International and National Legal Remedies], Ars Aequi Libri – Rechten van de Mens, Vol. 6, Nijmegen, 1985, pp. 1–30;


22. ‘Lentezwaluw of dode mus?’ [Hopeful Openings or Dead Ends?] (in cooperation with L. Betten), in J.B.J.M. ten Berge et al. (eds.), *Recht als Norm en als Inspiratie* [Law as Norm and as Inspiration], Ars Aequi, Nijmegen, 1986, pp. 266–285;
23. ‘Function and Effectiveness of Supervision in an Economically Interdependent World’ (in cooperation with J. Rood), in P. van Dijk et al. (eds.), Restructuring the International Economic Order; the Role of Law and Lawyers, Kluwer, Deventer, 1987, pp. 135–149;
26. ‘For Better or For Worse?’, in A. Bloed and P. van Dijk (eds.), Forty Years International Court of Justice: Jurisdiction, Equity and Equality, Europa Institute, Utrecht, 1988, pp. 27–35;
29. ‘Het Internationale Verdrag inzake Burgerlijke en Politieke Rechten; Inhoud en Toezichtprocedures’ [The International Treaty on Civil and Political Rights; Substance and Supervisory Procedures], in P. van Dijk (ed.), Het Internationale Verdrag inzake Burgerlijke en Politieke Rechten en zijn betekenis voor Nederland [The International Covenant on Civil and Political Rights and its Significance for the Netherlands], Ars Aequi Libri – Rechten van de Mens, Vol. 8, Nijmegen, 1988, pp. 7–23;
31. ‘De Houding van de Hoge Raad jegens de verdragen inzake de Rechten van de Mens’ [The Attitude of the Court of Cassation towards Human Rights Treaties], in De Hoge Raad der Nederlanden; De plaats van de Hoge Raad in het huidige staatsbestel [The Court of Cassation in the Netherlands; its position in the Present Constitutional System], Tjeenk Willink, Zwolle, 1988, pp. 173–209;

34. ‘Het Recht der Internationale Organisaties in de Jaren Negentig’ [The Law of International Organizations in the Nineties], in Op zoek naar juridisch onderzoek in de jaren negentig [In Search of Legal Research in the Nineties], NISER, Utrecht, 1989, pp. 65–71;


38. ‘Non-interventie en mensenrechten; in het spanningsveld tussen afleidingsmanoeuvre en collectief toezicht’ [Non-intervention and human rights; in the tension area between diversionary tactic and collective supervision], in A.P. van Goudoever and J. Aalbers (eds.), Interventies in de internationale politiek [Interventions in International Politics] (in cooperation with A. Bloed), History Department of Utrecht University, Utrecht, 1990, pp. 215–237;


42. ‘Human Rights and the Free Movement of Persons in Europe; The role of the national judiciary in the Netherlands’ (in cooperation with M. Schreuder-Vlasblom), in H.G. Schermers et al. (eds.), Free Movement of Persons in Europe, Nijhoff, Dordrecht, 1993, pp. 298–318;
Bibliography Pieter van Dijk

43. ‘Rechten van de mens; de mens als burger’ [Human Rights; Man as a Citizen], in K. Hellingman (ed.), Europa in de steigers: van Gemeenschap tot Unie [Europe under Construction: from Community towards Unity], Kluwer, Deventer, 1993, pp. 79–87;


Bibliography Pieter van Dijk


60. ‘Voorwaards over de drempel; Enige beschouwingen over het acquis conventionnel bij gelegenheid van de vijftigste verjaardag van het EVRM en de veertigste verjaardag van het Hof’ [Forward across the Threshold; Some Observations on the Acquis Conventionnel at the occasion of the 50th Anniversary of the ECHR and the 40th Anniversary of the Court], in R.A. Lawson and E. Myjer (eds.), 50 Jaar Europees Verdrag voor de Rechten van de Mens [Fifty Years European Convention on Human Rights], Leiden, 2000, pp. 595–609;

61. ‘Separate opinions in the practice of the European Court of Human Rights during the Martens Era’, in W.E. Haak, G.J.M. Corstens and M.I. Veldt
(eds.), Martens Dissenting; The separate opinions of a European Human Rights Judge, Zwolle, 2000, pp. 7–12;

ARTICLES
1. 'Het Optreden van de EEG als Rechtspersoon op het Terrein van de Buitenlandse Betrekkingen' [The EEC as an International Legal Person and its External Relations], Ars Aequi 1966, pp. 217–231;
5. ‘De Rechtsgrondslag voor de Oplossing van een Conflict tussen Gemeenschapsrecht en Nationaal Recht door de Nationale Rechter’ [Legal Basis for the Solution of Conflicts between Community Law and Domestic Law by National Courts], Sociaal-Economische Wetgeving 1976, pp. 280–287;
9. ‘Deelneming door Nederland aan UNIFIL; een Volkenrechtelijke Verplichting?’ [Netherlands’ Participation in UNIFIL; an International Legal Obligation?], Nederlands Juristenblad 1979, pp. 337–340;
10. ‘Plaats en Inhoud van het Mensenrechtenbeleid in de Nederlandse Buitenlandse Politiek’ [Netherlands’ Foreign Policy and Human Rights], Publication by the NIEO-Association 1979, pp. 1–6;
12. ‘Mensenrechten en de Oost-West betrekkingen’ [Human Rights and the East-West Relations], Civis Mundi 1979, pp. 253–256;
13. ‘Rechten van de Mens en Ontwikkelingssamenwerking; enige Rechtsbeginselen’ [Human Rights and Development-Cooperation; some legal principles], NJCM-Bulletin 1980, pp. 4–20;
14. ‘Helsinki-Belgrade-Madrid: a Difficult Road, Council of Europe’, Forum 1/80;
17. ‘Recht op ontwikkeling; een prioriteitsstelling’ [Right to Development; A Matter of Priority], NJCM-Bulletin 1981, pp. 132–146;
18. ‘De mensenrechten in de Slotakte van Helsinki; geen suprematie, geen subordinatie, maar integratie’ [Human Rights in the Final Act of Helsinki; No Supremacy, No Subordination, but Integration], Civis Mundi 1981, pp. 76–81;
22. ‘Integratie van de mensenrechtenproblematiek in het buitenlandse beleid’ [Integration of Human Rights Problems in Foreign Policy], Iede ‘66, December 1985, pp. 92–97;
30. ‘Normative Force and Effectiveness of International Norms’, German Yearbook of International Law 1987, pp. 9–35;
34. ‘Romania; Again an Eastern European Loner?, Netherlands Quarterly of Human Rights 1990, pp. 20–25; also published in Dutch in Helsinki Monitor 1990, pp. 18–20;
39. ‘CVSE en de rechten van de mens; de CHD-bijeenkomst in Moskou’ [CSCE and Human Rights: the CHD-meeting in Moscow] (in cooperation with A. Bloed), Internationale Spectator 1991, pp. 573–578;
43. ‘Homo ludens Europeus; Spelen met democratie’ [Homo Ludens Europeus; Play Games with Democracy], Nederlands Juristenblad 1992, pp. 551–552;
44. ‘Verdragsgoedkeuringswetten; vreemde vogels’ [Acts concerning the Approval of Treaties; Strange Birds], Nederlands Juristenblad 1992, pp. 1544–1546;
47. ‘Bendenoun binnen proporties’ [The Bendenoun Judgment within Proportions], Nederlands Juristenblad 1994, pp. 1526–1527;
48. ‘Universaliteti i te Drejtave te Njeriut kundrejt Relativitetit te Vlerave; Liria e Opinionit dhe e Shprehjes’ [Universality of Human Rights versus the Relativity of Values; Freedom of Opinion and Expression], Revista Shqiptare për të drejtat e njeriut 1995, pp. 10–21;
50. ‘Homo ludens en de menselijke maat’ [Homo Ludens and Human Proportion], Nederlands Juristenblad 1996, pp. 1671–1672;
52. ‘De “objectieve” onpartijdigheid van de rechter’ [The ‘Objective’ Impartiality of Judges], Nederlands Juristenblad 1997, pp. 1213–1219;
55. ‘Een efficiënt en effectief stelsel van toezicht op de naleving van het EVRM. De rolverdeling bij de rechtsvorming en rechtshandhaving’ [An effective and efficient system of supervision of the implementation of the ECHR. The division of functions in the creation and maintenance of the law], NJCM Bulletin 2003, pp. 394–403;
56. ‘De Europese Commissie voor Democratie door Recht (Venetië Commissie); Het stille geweten van de Raad van Europa’, [The European Commission for Democracy through Law (Venice Commission); The Silent Conscience of the Council of Europe], NJCM Bulletin 2006, pp. 83–92;

ANNOTATIONS

1. Annotaties bij de arresten van het Hof van Justitie van de Europese Gemeenschappen in de zaken 146/73 en 166/73 [Comments on the judgments of the Court of Justice of the EC in Case 146/73 and Case 166/73], Sociaal-Economische Wetgeving 1974, pp. 458–466;
2. Annotaties bij de arresten van het Hof van Justitie van de Europese Gemeenschappen in de zaken 175/73 en 18/74 [Comments on the judgments
of the Court of Justice of the EC in Case 175/73 and Case 18/74, Sociaal-Economische Wetgeving 1975, pp. 142–153;

3. Annotatie bij de beslissing van het Finanzgericht Berlin van 27 februari 1976 [Comments on the decision of the Finanzgericht Berlin of February 27th, 1976], Sociaal-Economische Wetgeving 1976, pp. 672–678;

4. Annotatie bij de arresten van het Hof van Justitie van de Europese Gemeenschappen in de zaken 33/76 en 45/76 [Comments on the judgments of the Court of Justice of the EC in Case 33/76 and Case 45/76], Sociaal-Economische Wetgeving 1977, pp. 466–473;

5. Annotatie bij het arrest van het Hof van Justitie van de Europese Gemeenschappen in de zaak 101/76 [Comments on the judgment of the Court of Justice of the EC in Case 101/76], Sociaal-Economische Wetgeving 1977, pp. 713–718;

6. Annotatie bij een beslissing van de Afdeling Rechtspraak van de Raad van State van 15 juli 1977 [Comments on a decision of the Jurisdiction Division of the Council of State of July 15th, 1977], Sociaal-Economische Wetgeving 1978, pp. 70–76;

7. Annotatie bij beslissing 1/78 van het Hof van Justitie van de Europese Gemeenschappen ingevolge artikel 103 van het Euratom-Verdrag [Comments on Ruling 1/78 of the Court of Justice of the EC under Article 103 of the Euratom Treaty], Sociaal-Economische Wetgeving 1979, pp. 176–192;


12. Aantekening bij een beslissing van de Afdeling Rechtspraak van de Raad van State van 26 juni 1980 [Comments on a decision of the Jurisdiction


OPINIONS VENICE COMMISSION


Belgium (in cooperation with Franz Matscher, Giorgio Malinverni and Sergio Bartole), Venice Commission, CDL-AD (2002) 1, 12 March 2002, 10 pp.;


33. Amicus Curiae Opinion on the Nature of the Proceedings before the Human Rights Chamber and the Constitutional Court of Bosnia and Herzegovina (together with Peter Jambrek, Giorgio Malinverni and Franz Matscher), Venice Commission, CDL-AD(2005), 15 June 2005, 6 pp.;
35. Opinion on the Draft Law on the Statute of National Minorities Living in Romania (in cooperation with Sergio Bartole), Venice Commission, CDL-AD(2005);


60. Opinion on the existing mechanisms to review the compatibility with human rights standards of acts by UNMIK and EULEX in Kosovo (in cooperation with Jean-Claude Scholsem and Georg Nolte), Venice Commission, CDL-AD(2010)051, 21 December 2010, 16 pp.;
61. Opinion on the Warning addressed to the Belarus Association of Journalists on 13 January 2010 by the Minister of Justice (in cooperation with Christoph Grabenwarter, Peter Paczolay and Herdis Thorgerisdottir), Venice Commission, CDL-AD(2010)053, 22 December 2010, 15 pp.;