

THE REALISATION OF HUMAN RIGHTS:
WHEN THEORY MEETS PRACTICE



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MEETS PRACTICE

Studies in Honour of Leo Zwaak

Editors

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FOREWORD

I first met Leo Zwaak some 25 years ago. We were both, with our students, participating in the René Cassin Moot Court Competition in Strasbourg. We, from Ghent, were there to learn. We were not very ambitious since it was the first time we were participating. And we did not yet have many international contacts who could have warned us for the ins and outs of such a moot court. Leo, on the other hand, was very ambitious. Unlike us, he already was a welcome guest in Strasbourg: he had worked there for the Council of Europe and could therefore count on a lot of international contacts. Already then, he could undoubtedly be considered to be a walking encyclopaedia on the European Convention on Human Rights (ECHR). Indeed, he basically knew all the judgments of the European Court of Human Rights, as well as the reports and decisions of the then European Commission of Human Rights, and he could quite literally quote from them all. At that time, Utrecht University was already very knowledgeable on the subject of the ECHR.

We did not score very well, but neither did Leo's team. Thus, our first contact consisted of Leo grumbling about the arbitrariness of the jury. He was right, of course. But at first, we, the somewhat 'backward Belgians' took pleasure at the misfortune of the 'clever Dutch neighbours'. This feeling, however, did not linger. Soon enough the conversation moved from established prejudices and stereotypes to captivating discussions about the profundities of the ECHR. The tone was set for the duration of the competition. Every night, together with some students of other teams, we formed a little group that, after a good many drinks, every single day kept on changing the world. It was the beginning of a long friendship, with great admiration on my behalf for the knowledge, dedication, idealism and non-conformism of Leo Zwaak, the greatest *Burgundian* (*bon vivant*) of Dutch intellectuals.

The *Liber Amicorum* pleases me for two reasons. First of all because all authors are undoubtedly considered by Leo as true friends. Having acquired such an extensive and international set of experts as friends is a merit in itself. It means that Leo is held in high esteem by a lot of his colleagues, and rightly so.

I am also satisfied about the contents. It was very tempting to exclusively deal, yet again, with the classic themes of the ECHR. But Leo's interests went much further, which is clearly reflected in this book. Anyway, we can be sure that in the coming decades those other international human rights instruments will increasingly play a central role, next to the mature – or should we say the somewhat 'overripe' – ECHR. The time when human rights and international

institutions implementing human rights were mainly a European and Western phenomenon, definitively belongs to the past.

It is very tempting to fill the introduction to a *Liber Amicorum* with all sorts of platitudes and clichés. I am trying to save Leo from this. I am delighted to be given the opportunity to write this foreword for a friend, whom I do not see often enough, but with whom I have had wonderful conversations, set up a wonderful project such as our International Human Rights Academy on Robben Island, and especially with whom I have spent many an evening discussing everything – professionally and privately – that fascinated us. It's high time I invited him and his lovely wife over to Ghent again. So: 'It's a promise, Leo'!

Johan Vande Lanotte

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Belgium

Ghent, 11 November 2013

VOORWOORD

Ik leerde Leo Zwaak ongeveer 25 jaar geleden kennen. We waren allebei met onze studenten aanwezig op de René Cassin-pleitwedstrijd in Straatsburg. Wij, vanuit Gent, waren er gekomen om te leren. We hadden weinig ambitie, want het was onze eerste deelname. En we hadden nog niet erg veel internationale contacten die ons hadden kunnen waarschuwen hoe zo'n pleitwedstrijd in elkaar zit. Leo was erg ambitieus naar de wedstrijd gekomen. In tegenstelling tot ons, was Leo toen al een graag geziene gast in Straatsburg: hij had er voor de Raad van Europa gewerkt en had er dus heel veel internationale contacten, en toen al kon hij zonder probleem als een levende encyclopedie van het Europees Verdrag voor de Rechten van de Mens (EVRM) worden beschouwd. Hij kende namelijk alle arresten van het Europees Hof voor de Rechten van de Mens, alsook de rapporten en beslissingen van de toenmalige Europese Commissie voor de Rechten van de Mens bij naam en toenaam, en hij kon er letterlijk uit debiteren. De Universiteit Utrecht in zijn geheel had toen trouwens alle nodige EVRM-ervaring opgebouwd.

Wij presteerden niet spectaculair goed, maar ook het team van Leo presteerde ondermaats. Ons eerste contact bestond er dus uit dat Leo een uur lang sakkerde over de willekeur bij de jurering. Hij had gelijk. Maar in het begin hadden wij als 'wat achterlijke Belgen' toch een beetje leedvermaak met de 'slimme noorderburen'. Dat duurde echter niet lang. Al gauw verlieten de gesprekken de geëffende paden van vooroordelen en ontstond er een boeiende discussie over de diepe gronden van het EVRM. Zo ging het daarna iedere dag van de wedstrijd. En iedere avond vormden we met nog enkele studenten van andere teams een overblijversgroepje dat na menig glas elke dag weer de wereld veranderde. Het was het begin van een lange vriendschap met diepe bewondering van mijnentwege voor de kennis, de inzet, het idealisme en het non-conformisme van Leo Zwaak, de meest Bourgondische der Nederlandse intellectuelen.

Het *Liber Amicorum* verheugt me om twee redenen. In de eerste plaats omdat alle auteurs ongetwijfeld door Leo als echte vrienden beschouwd worden. Wanneer iemand zo'n uitgebreide en internationale schare van experts als vrienden kan beschouwen, dan is dat op zich al een verdienste. Het betekent dat Leo door veel collega's heel hoog wordt ingeschat en dat is ook volkomen terecht.

Ook de inhoud stemt mij tevreden. Het was verleidelijk nog maar eens uitsluitend de klassieke thema's van het EVRM te bespelen. Maar Leo had veel ruimere interesses en de inhoud van het boek weerspiegelt dat ook duidelijk. We mogen er overigens van overtuigd zijn dat de komende decennia die andere internationale mensenrechteninstrumenten meer en meer een centrale

rol gaan spelen, naast het mature – of moeten we ondertussen zeggen al wat overrijpe – EVRM. De tijd dat mensenrechten en internationale instellingen die mensenrechten afdwingen vooral een Europees dan wel Westers fenomeen waren, behoort immers definitief tot het verleden.

De inleiding bij een *Liber Amicorum* is verleidelijk om allerlei platitudes en clichés neer te pennen. Ik probeer Leo dit te besparen. Ik ben blij dat ik dit Voorwoord mocht schrijven, voor een vriend die ik veel te weinig zag, maar met wie ik prachtige gesprekken kon voeren, een mooi project als onze International Human Rights Academy op Robben Island kon opstarten, en vooral vele avonden kon doorbomen over alles wat ons – professioneel of privé – bezighield. Tijd dat ik hem samen met zijn lieve vrouw nog eens in Gent uitnodig. Dus: ‘Beloofd, Leo’!

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Vice-Eerste Minister & Minister van Economie en Consumentenbescherming
van België

Gent, 11 november 2013

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