

CORINNA WISSELSPRIJS 2022

The best thesis in the area of the law of the European Union

Report of the Jury

26 January 2023

The 2022 jury

The Netherlands Association for European Law (NVER) appoints every year a jury and entrusts it with the task to award a prize for the best thesis in the area of European Union law. In honor of the farewell of Corinna Wissels as chair of the NVER and in gratitude for everything she has done for the NVER, the *NVER Scriptieprijs* was renamed the *Corinna Wisselsprijs* in November 2022.

For the year 2022, the jury consisted of the following five members of the NVER:

- Ronald van den Tweel, President of the Jury, Council of State, The Hague,
- Sjors Hoozeveld, winner of the 2021 *NVER Scriptieprijs*, Authority for Consumers & Markets, The Hague,
- Elske Raedts, Stibbe, Amsterdam,
- Harrie Temmink, European Commission, Brussels, and
- Guus de Vries, Ministry of Foreign Affairs, The Hague.

Eligibility criteria

Eligible for the *Corinna Wisselsprijs* are only those theses, written in the previous academic year as a compulsory part of a bachelor's or master's degree program at a Dutch university. Moreover, only theses, which obtained a grade of at least 8 out of 10, can be considered.

Number and subjects covered by the eligible theses

The jury assessed twenty-three theses, in a balanced ratio from nearly all the Dutch universities. Nonetheless, only four of them were written in the Dutch language. The theses covered a wide range of topics, some of which distinguished themselves by their great originality. Many theses covered classic topics of substantive law (e.g. competition, labour law, data protection, corporate law), others dealt with topics of a more institutional nature (e.g. fundamental rights and principles, direct effect, economic and monetary policy, international private law). It was interesting, although not surprising, to see that a large part of the theses focussed on the various aspects of the digital society and their consequences for competition within the EU and in relation to third countries. Other societal challenges such as climate and environmental concerns and crises like the Covid-19 pandemic and the Ukraine-war, did not (yet) get any attention in the eligible theses of this year.

Assessment criteria and methodology

The NVER rules state that the jury should assess each eligible thesis using the following three benchmarks: (i) originality; (ii) thorough research; and (iii) writing skills. The jury assessed only anonymized versions of the eligible theses.

During a first selection round, each thesis was read by two jury members and each member was asked to select the two theses he or she considered the best. Arrangements were subsequently made so as to ensure that eventually all jury members effectively read the – in our case - eight theses thus selected. Finally, during a plenary hybrid session the jury deliberated on the remaining three theses the jury considered the best of all theses.

Decision of the jury

The deliberation of the jury led to a unanimous decision to award the first edition of the *Corinna Wisselsprijs 2022* to **Till Stadtbäumer** (Utrecht University) for his thesis “**Religious freedom in the EU: the jurisprudence of the European Court of Justice in light of diverging national case law**”.

On the same occasion, the jury unanimously agreed to merit a honorary mention to **Emilia Sandri** (Utrecht University) for her thesis “**The *Zeitgeist* of the European Court of Justice: The Evolution of the Principle of Direct Effect through Jurisprudence of the Court and its Consequences for National Laws**”.

Reasons for the award of the Corinna Wisselsprijs to Mr Stadtbäumer

The topic of Stadtbäumer’s thesis is both fundamental and topical. It examines the fundamental right of religious freedom and the tensions between the European and the national legal orders. First the thesis examines the concepts of freedom of religion, the positive and negative freedom, and the protected aspects of religion (forum internum and forum externum). The thesis shows the diverging understandings of religion and freedom of religion among the member states. It covers not only the relevant jurisprudence of the European Court of Justice but also the national case law of eight member states. It distinguishes between jurisprudence in relation to the treatment of religious symbols in the workplace and in relation to the use of occupational requirements by religious employers. Mr Stadtbäumer notes that the jurisprudence of the Court of Justice can be described as a double track approach: leaving a margin of discretion regarding prohibitions of religious symbols at work while imposing a clear standard of judicial review of religious communities and their occupational requirements. After an analysis using several theories and an assessment of three types of supremacy locks, set by the national constitutional courts, the author comes to the conclusion that the Court should have adopted a stricter control in cases of the first category (treatment of religious symbols), for instance a higher standard of

justification for the need of neutrality. On the other hand, in regard to the second category (occupational requirements by religious employers) the Court should have been more self-restrained and left the member states' judiciary more leeway, in order to avoid a constitutional conflict.

The thesis deals with a fundamental issue in an original and creative way. The bibliography is impressive and the author analyses the national case law from no less than eight member states. The thesis is quite long (over 70 pages) but has a clear structure and takes the reader by the hand in a pleasantly readable way. Based on a clear research question Mr Stadtbäumer comes to a thorough analysis and assessment of the literature and jurisprudence of the ECJ in light of supremacy locks. He takes a well argued and convincing position in the matter. With his thesis Mr Stadtbäumer gives a constructive contribution to the, not only legally but also socially relevant, discussion on the relation between the primacy of EU-law and the diverging national interpretations of the fundamental right of freedom of religion and the role of the ECJ. The jury very much appreciated his approach.

In sum, the thesis is well structured and balanced. It has considerable depth, and amounts to a well argued, persuasive plea. For all these reasons, the jury is most pleased to award the *Corinna Wisselsprijs 2022* to Mr Stadtbäumer.

Reasons for the honorary mention of the thesis of Ms Sandri

Despite the fact that the doctrine of direct effect is subject of comprehensive literature and jurisprudence, Ms Sandri presents a refreshing oversight of the evolution in the doctrine of direct effect since Van Gend and Loos. The thesis is well structured, thorough and well written: it keeps the reader engaged, especially with her well founded argument that Poplawski II caused a new wave that may effect the doctrine of supremacy of EU-law. The author indicates the new challenges for the national judges in re-aligning domestic law with EU-law. The thesis is a worthy runner up and the jury is pleased to grant the honorary mention to Ms Sandri.

Overall assessment

The jury is impressed with the quality of the theses, most theses are well written and thoroughly documented while authors do not shy away from expressing own opinions. The theses cover a wide range of topics. The theses illustrate that EU-law senses the Zeitgeist well and adapts to societal challenges such as digitalization, climate and environmental concerns, but also to the crises we nowadays are facing, such as the Covid-19 pandemic. At the same time, the theses of Mr Stadtbäumer and Ms Sandri show that the classical doctrines of direct effect and supremacy of EU-law are very much alive!
