Rejus conference
Art. 47 CFREU, fundamental rights and the role of national Supreme Courts

Brussels, 1 October 2018
Edgar du Perron
e.duperron@hogeraad.nl
Law is what the judge had time to read
Civil law

Supreme Court

Appeal Courts & District Courts

National consultation group of district court and appeal judges

HR

CVRIA

Guidelines

Mak: 34%

Request for preliminary ruling

Cassation

Consultation

(Semi) Binding input

de Rechtspraak

LOVCK
Sanctions must be
• effective
• proportionate
• dissuasive

Runs counter to Dutch private law in general and so against judges’ intuition.

System needs to be explained.
Law in MS

Law of EU origin

Law of national or non-EU origin

CFR applies

One way equivalence mirror

ECHR applies

Ex officio application of fundamental rights / protective rules
**Article 47(3) CFR**

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
<table>
<thead>
<tr>
<th>Small claims court</th>
<th>Legal person</th>
<th>Natural person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim €500&lt;€12.500</td>
<td>€476</td>
<td>€226</td>
</tr>
</tbody>
</table>
Offer of fixed-term employment for a project on the UN Convention on the Elimination of All Forms of Racial Discrimination

Consequences of disapplication?

If not possible to interpret national law in conformity with Art. 4(2) Directive 2000/78/EC, court has to disapply contrary national provision to ensure protection Art. 21 and 47 CFR.

ECLI:EU:C:2018:257 (Egenberger)

Shortlisted, but not invited, because no church member

Is horizontal effect fair?
SC: give full effect to fundamental rights in relevant area

Law in MS

Law of EU origin
- Art. 47 CFR
- Beyond equivalence
- Procedural safeguards
- Effective remedies
- Balancing

SC: within MS limits, strive for coherence in all MS law

No ‘fundamentalisation’ without a fundament