Farewell speech of Judge Vajda at the Court of Justice of the European Union
12 February 2020

Je vous remercie M. le Président, cher Koen, pour ce discours très chaleureux. In replying, I have decided also to speak in English to spare my former colleagues, and indeed others here tonight, from my heavily accented French and to ensure that what I say is comprehensible to you all or at least the majority of you.

We are all conscious that today's ceremony marks, for the Court, an unprecedented event in its almost 70 year of existence. For it marks not only the end of the mandate of a judge on this Court but also the withdrawal of his Member State from the European Union. However, you will, I hope, be neither surprised nor disappointed that the one thing I will not talk about tonight is Brexit. It is a political event that has now taken place. We do not engage in politics here. On the contrary, as the French say, il faut prendre acte.

I would like to begin by saying that it gives me enormous pleasure to see so many familiar faces here tonight, not just of course my colleagues on the Court, or more accurately my former colleagues and members of my (former) cabinet but also a number of friends and former colleagues who have made the journey from London or Brussels. There are also a number of people, including former members of this Court and members of the senior judiciary in the UK who were invited but unfortunately were not able to come. They have sent their regrets for not being with us tonight. All of you have shared with me a part of my career, whether as a barrister or a judge. One of my great pleasures here on the Bench has been to sit on a case to witness, with my own ears and eyes, how junior members of the English Bar who I had known in their professional infancy have grown up to become formidable advocates. Of course, I hasten to add that does not mean that I was necessarily persuaded by what they said. Indeed, I have also had the pleasure of listening to equally powerful advocates who have come from elsewhere in the EU, including the Commission Legal Service. If I may mention just one name it is Richard Lyall of the Commission Legal Service who, as many of us know, can explain, with childlike simplicity, even the most impenetrable provision of a VAT Directive. Speaking for myself this is a quality that I rather valued. Both of us go back a long way. We first crossed swords as advocates almost 30 years ago in Case T-110/92 where my client had brought an action for failure to act against the Commission. The case did not, however, lead to a judgment as it was removed from the register early in its life. If I recall

correctly, the Commission cured the failure to act a few days after we had lodged our application.

Advocates are, of course, essential to the proper functioning of this Court. The role of the Court is, if I may say so, akin to a midwife. In giving judgment, it does its best to deliver a healthy baby. But the judgment, like the baby, is conceived elsewhere. The importance of advocacy, both in its written and oral format, is probably one of the greatest contributions that the UK made to the development of this Institution. I will come back to this shortly. Let me first go back in history.

The UK joined the EEC, as it was then called, on 1st January 1973. I was 17 at the time so you will understand that neither EEC law nor this Court formed any part of my life at that time. However, after my law degree in Cambridge I was persuaded to do a postgraduate degree in Brussels in EEC law by the Emeritus Professor of Comparative Law at Cambridge, Jack Hamson. In the 1950s he had written a pioneering English textbook on French administrative law at a time when the concept of administrative law did not yet exist in English law. I went to Brussels way before any Erasmus scheme was in existence and readily confess that one of the attractions of going there was the award of a very generous scholarship which enabled me to divide my time between the University and the bars and restaurants of that city in a manner that I believed did full justice to the principles of diligence and proportionality.

My first visit to the Court had taken place a little earlier in 1976 shortly after the landmark judgment in Defrenne v. SABENA, where a doughty female flight attendant successfully challenged Sabena's policy of paying women less than men as being contrary to the principle of equal pay for men and women. That case was probably the first where the influence of the United Kingdom was felt. The UK intervened in that case as it foresaw that if Mme Defrenne won her case there could be a huge economic impact for employers across the EEC who would be faced with large claims for back pay possibly without any limitation period with the risk that some of them would be bankrupted. This was because most Member States, supported by the Commission, had considered that the principle of equal pay laid down in the Treaty was, to paraphrase St. Augustine, a noble aspiration but not just yet. The UK persuaded the Court to impose a temporal limitation on its judgment.

The Defrenne case was an early recognition by the United Kingdom of the importance of this Court to the development of EU Law. The UK therefore became a frequent party before this Court. The figures are quite striking. Between the UK's accession in 1973 and 2016 (the year of the referendum) the UK intervened in 281 cases and during the same period presented observations in 718 preliminary references from other Member States, which is more than any other Member State. This policy of active engagement with the Court was to the benefit not just of the UK, the Court and the development of European law generally but also of many generations of English barristers, including myself, who were instructed to represent the UK. Indeed because the UK was rather prudent, to use a neutral phrase, in the level of fees paid to barristers it was a marvelous opportunity for young barristers to cut their teeth on interesting EU cases early in their career.

What then about the contribution made by British members of the Court? The two first members of this Court from the United Kingdom were, Lord Mackenzie Stuart as the judge and Jean Pierre Warner as Advocate General. Both served this Court with distinction, In one of his first Opinions Advocate General Warner concluded in Transocean Marine Paint v. Commission that a Commission decision should be annulled because it failed to respect the rule of *audi alteram partem*. Let me just quote a short passage from his Opinion as it demonstrates not just his legal analysis but also his use of language: "In the law of England the rule is centuries old, firmly established and of daily application. It is considered to be a "rule of natural justice", a somewhat flamboyant and sometimes criticized phrase embodying a concept akin to what is, in French-speaking countries, more soberly and, I think, more accurately, referred to as "les principes généraux du droit". The Court endorsed his conclusion.

For his part, Lord Mackenzie Stuart became the first (and last) British (indeed Scottish) judge to become the President of this Court (1984-1988). I recall attending a conference organized by the Court under his Presidency in the Hague to discuss what the Court could do to deal the increasing tide of references for a preliminary ruling that was threatening to overwhelm the Court. Out of curiosity, I looked up the number of preliminary references in 1985. It was 139. What, I wonder, would our predecessors have thought if they knew that the number of references last year was 641, an increase that has greatly exceeded the growth in the number of members of the Court?

In 1981 Sir Gordon Slynn, who subsequently became the British judge on the departure of Lord Mackenzie Stuart, succeeded Jean Pierre Warner as Advocate General. Although Sir Gordon Slynn made his own contribution to this Court, probably his most lasting legacy was the creation of Slynn Foundation. This foundation enabled judges, practitioners, and academics to bring EU law to the countries of Central and Eastern Europe after the fall of the communist regimes in 1990. On one occasion, Sir Gordon asked me to speak at a conference in Budapest where I learnt a valuable geography lesson. I began my talk by saying how delighted I was to be here in Eastern Europe but my host quickly corrected me and said, no Mr. Vajda, this is not Eastern but Central Europe. My embarrassment was all the greater since, as my name indicates, I myself am of Hungarian origin on my father's side.

Sir Francis Jacobs, whom I am delighted to see here tonight, succeeded Sir Gordon Slynn as Advocate General in 1988. I hope Francis will not mind if I say that he was undoubtedly one of the great Advocate Generals at this Court. After Francis retired in 2006 we organized a conference in London to celebrate his enormous contribution to EU law. We had originally planned an evening event but it soon became apparent that such was the number, diversity, and importance of his Opinions an evening would not suffice. We ended up with a full one-day conference. Sir Francis was succeeded in turn by Eleanor Sharpston who has made her own distinct contribution to EU law.

Returning to the judges, Sir Gordon Slynn was followed in 1992 by Sir David Edward. Sir David had been the first British judge at the birth of the Court of First Instance in 1989 and was the first member of that Court to come to this Court. He created an important precedent as some years later he was followed by his Belgian colleague, Koen Lenaerts, who, of course, has made, and is still making, his own enormous contribution to the development of EU law. By this time I was beginning to appear reasonably frequently as a barrister in cases before the Court. Sir David quickly acquired the reputation amongst us of invariably asking a deceptively short and simple question that threatened to blow open a carefully constructed argument. Sir David was succeeded by Sir Konrad Schiemann in 2003 who served the Court with distinction until 2012 when I arrived and whom I am also pleased to see here tonight. His influence went beyond contributing to the judgments of the Court. I recall that at the first official photograph of the Court at which I was present, one of my colleagues informed us that Sir Konrad said that judges should not smile at the camera because in Britain a smiling judge

was still associated with the occasion when, in the past, a judge was about to pronounce the death penalty. His advice was duly followed.

My first case at the Court dates back to 1982 as the junior barrister in the team which persuaded the President of the Court to suspend a Commission interim measures competition decision. Despite the Commission urging the President not to undermine the Commission's powers to order interim measures the President accepted our argument that there was a real issue as to whether the Commission had exceeded its powers and that the balance of convenience lay in our favour. He therefore imposed a partial suspension of the Commission's decision. This is just one example of the importance the Court has always attached to the rule of law.

It is not surprising that since 1982 I have seen significant change in the working methods of the Court. I am happy to say that most of them have been for the better.

The most significant change, and the one most visible to the outset world, is that oral hearings are no longer a formal procedure where the lawyers read out their pleadings, there are no questions from the Bench, and the lawyers then go home. I recall that as late as the mid-1990s I acted for a large UK company in a direct tax dispute with the British tax authorities that had referred to this court by the House of Lords. There was not a single question at the hearing. My client asking me at the end how I thought the case had gone. I do not know if he thought that I possessed mystic powers but I had to confess to him that I had no more idea than he did. I am happy to say that during my time as a judge I have not attended a single oral hearing where no question has been asked. This shows the wisdom of the Court's current practice that there should only be an oral hearing (save in those limited cases where a party still has a right to an oral hearing) where there will be added value to the written pleadings. I should stress that I do not regard questions as some sort of machismo act by members of the Court but rather as a way of testing the arguments of the parties, considering where such arguments would lead to, all with the aim of producing a better judgment. Equally, oral hearings are important for the wider public as they are in effect the shop window of the Court. Although it may be said that questioning from the Bench was something that the British legal tradition brought to the Court I am confident that this is now so embedded in the DNA of the Court that it will continue after Brexit.

This brings me to the only suggestion that I am going to make this evening. Those of us who are present in this Court at an oral hearing are able to witness what an impressive and important occasion it is. One such occasion was the hearing in the Wightman in November 2018 on the question whether a Member State had a unilateral right to revoke an Article 50 notification of its intention to withdraw from the EU. However, the only people who could follow those proceedings were those who were physically present here in the Grande Salle that holds some three hundred people. One might contrast the position with that in the UK Supreme Court where hearings are live streamed via its website. The first Miller case in 2017 raised an equally important question as to whether, as a matter of United Kingdom law, the power to trigger such a notification lay with the executive or the legislature. More than 300,000 persons viewed the first day of the proceedings before the Supreme Court. In the second Miller case in 2019, on the question of whether the prorogation of Parliament by the executive was an act subject to judicial review by a court, the Supreme Court received 12 million individual connection requests. I think therefore the time has come for this Court to embrace live streaming. This would enable many more people to see the Court in action and bring the Court closer to the individual citizen. For my part, I look forward to the day when I can watch my former colleagues in action from the comfort of a sofa anywhere in the world.

It now only remains for me to say some thank yous. It has been a privilege for me to serve as a member of this Court for just over seven years. I have served with wonderful colleagues who have been a pleasure to work with. In a court where there are no dissenting judgments there is a premium on teamwork. I have very enjoyed being part of such teams and helping crafting a judgment that is often the product of many minds. That is one of the many strengths of this Court. In this respect I have been particular fortunate in my Chamber Presidents, Thomas von Danwitz for six years and subsequently Sacho Arabadjiev. In addition, I have been privileged to serve under Koen Lenaerts who not only is a brilliant lawyer and judge but also, as the paterfamilias of this Institution, treats all of us as part of his own family. Of course, we all know that Koen has plenty of experience in bringing up and looking after a large family – and we, the members of this Court, have been amongst the beneficiaries.

I would also like to pay a special tribute to the Registrar or, to use his French title, le Greffier, Alfredo Calot Escobar. He is a bit like an immaculate Swiss watch. We all take it for granted the Court functions so smoothly. However, one should not forget that in order for it to

function in this way work, a huge amount of work goes on behind the scenes. When Brexit appeared on the horizon the Court was faced with a number of totally novel issues, including some sensitive personnel issues. I have been very fortunate that Alfredo has always been there to discuss with me the way forward to find a humane and constructive solution. I also wish to pay tribute to the Deputy Greffier, Marc-André Gaudissart. It is only after one has been a judge for a little while that one discovers that a surprising number of cases bring with them some tricky procedural issues where there is no published precedent. When we faced such an issue I would contact Marc-André for a view. With his encyclopedic knowledge he would tell me whether this issue had arisen before and in any event propose a solution, albeit that he would always stress that it was entirely a matter for me as to how I should proceed.

The Court is a multilingual court. Oral hearings depend on excellent interpreters. We are fortunate enough to have such people here and I would like to pay tribute to their dedication and, I am sure, you Mr. President will understand if I pay a particular tribute to the English language interpreters whose voices became more familiar to me than even the most well-known broadcasters on the BBC.

I come now to my cabinet. I recall at my interview in London for this job I was asked how I would run a cabinet, something I had never done in my life before. I said that it was important the cabinet was, as we say in English, a happy ship. A happy ship is also a productive ship. This is exactly how my cabinet operated during my years here. I was fortunate enough to inherit Gabriella and Nathalie who had worked in the British cabinet since the time of Sir David Edward. Perfection was their goal. They ensured that all the work that was distributed from the cabinet to other members of the Court (which was always in French) would have met with the approval of even the Académie Française. No task was too unimportant for them and they provided me with everything I could possibly need as a judge. The same is true of my référendaires. One of the greatest pleasures of this job, and an aspect that I shall miss, was working with them. So a huge thanks goes to them all with a special thank you to Csilla Fekete who was my first recruit and has been a constant support throughout my time here. A judge here is rather spoilt since he also has the benefit of a driver. In one sense my driver, Graham had considerable more judicial experience than I have, as I was fourth British judge that he served. He also played an important role in the development of our son Conrad, who was born in Luxembourg. Graham witnessed and nurtured Conrad's growing love of football and caused a whoop of joy last Christmas when Conrad unwrapped the Arsenal woolly hat

that he gave him as a present. Finally. I must thank my wife for all that she has done to support, as she calls us, her two men. I am sure I can speak on behalf of both of them to say how grateful we are.