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Acknowledgment of the Honoured

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This text is the epilogue of a “discourse of resistance” regarding the termination of my duties at the Court of Justice of the European Union.

Twelve years of “exile” in one of the most exciting stages of my professional life had made me feel the effects of oblivion and suggested a silent and anonymous return.

I knew, however, that I had indefectible Friends and that, from time to time, I was remembered as someone who gave his best to serve the country at a time already characterized by considerable erosion of the State and collective will.

I thought I could benefit from these circumstances to resume the pace of days, reconstitute bonds of fellowship and revisit the usual places.

Surprisingly, a considerable number of Friends, coming from academic and professional circles, decided to summon this transition, with the organization of seminars, conferences and collections.

In some cases, I only had belated disclosure of the decisions and my reticence could just translate an outburst, for the movement was unstoppable and I do have a sense of gratitude. In other cases, however, I could follow the maturation of the idea.

So it was with the School of Law of the University of Minho.

The years in Luxembourg gave me the opportunity to live one of the most fascinating and successful experiences of cooperation with the University translated especially in seminars and guided tours. Professors, judges, lawyers and hundreds of students participated in these activities, giving utility to this window of dialogue. Moreover, I have resorted constantly to the faculty of opening internships in my Office, to which jurists from countries of the European Union naturally acceded but also, by taking advantage of the exception provided for in the Regulations of the Court, other countries, amongst which I highlight Switzerland, the United States of America, New Zealand and the People's Republic of China. The School of Law of the University of Minho earned the right to an annual calendar, which is due only to the interest of the School, the commitment of the participants and the indomitable spirit of the Professor of European Union Law and Director of the Centre of Studies in European Union Law (CEDU), Professor Alessandra Silveira.

Alessandra Aparecida Souza Silveira became, for the European Union community of Luxembourg, an example of a dynamism, academic activism, intellectual curiosity, organizational capacity and of obstinate and affectionate “talent” to create bridges, mobilize wills and demonstrate that teaching and learning is necessary.

Now, this is where my time for “resistance” appears.

Professor Alessandra Silveira expressed me early on her intention to organize a conference in my honour. My response was gently unfavourable and, in my disposal, final. Not only did I see no reason for homages but, mainly, it was hard for me to accept that the initiative was seen as a gesture of recognition when the truth is that the one indebted was me.

The contacts we had woven had provided for exchanges of views of great value and the opportunity for interventions, in particular of judges and advocates-general, which

reflected, in an educational way (which benefits those who learn and those who teach), the state of the law and case law of the Union.

The persistence of Professor Alessandra Silveira and her argumentative ductility left me, however, without an answer, especially when other universities had moved forward with similar projects.

I ultimately accepted, relinquishing, the now meaningless, evasive answers.

The conference in Braga was a success.

The idea, now realized, to compile the texts of the speeches then produced is the last phase of the “process”.

And I am particularly grateful for this worthwhile initiative, regardless of the history that surrounds me.

The interventions have a high scientific density and tackle crucial issues of European Union law that gained proportion and a greater importance with the crisis.

The majority of subjects were present in cases in which I intervened and where I even acted as rapporteur.

In the following lines, I leave the ballast, which stood from some cases, now that I begin to gain perspective and to know the value of the decisions through their effects.

As I wrote elsewhere, referring to the question of the position of Community law, the dialectic between *existential requirements and national identity* is intrinsic to the architecture of the Union. Sixty years of controversy and fractures of thought on the principle of primacy led us to an output whose key is the idea of constitutive pluralism in which lies in the legal order of the Union.

The multiculturalism reflected in the changes introduced by the Lisbon Treaty suggests a new field of observation obedient to the accommodation and harmonization of principles and attentive to the ideas of *difference, tolerance, acceptance* and *trust*. The appeal to the notion of prominence or hierarchy that seemed to greatly irritate the reticent and the fans of

new dogmatic constructions, as *divisible sovereignty* or *post-sovereignty*, now has a fertile ground for speculation that, without pinching the principle of preferential application of Union law, is at the service of identity and community cohesion. The road was long and there were many pitfalls, as it happened with the issue of fundamental rights that seemed settled with the Judgment *Internationale Handelsgesellschaft* but it became viral, until the Charter of Fundamental Rights of the European Union and the accession to the European Convention on Human Rights rendered it obsolete.

Judicial cooperation has brought us, in turn, a new freedom of movement (of decision making) and will function as an approximation and demystification factor of the economic symbolism, in a time that very much needs this instrument, given the effects of globalization and the attempts, in some places successful, of deconstruction of the law.

The new migration flows and the deregulation of markets are lacking in law to protect the European man, to “tame” the chaos and curb illegitimate interests.

These subjects are inextricably linked to issues of citizenship and effective judicial protection. It is perhaps here that the future of the Union is decided.

The last few years have proved to be lavish in decisions intended to convert the citizenship of the Union in the fundamental status of nationals of Member States, as promised in the Judgment *Grzelczyk*. However, volatility was the trademark image of some case law, sometimes limited to postulates or weakened by continuity solutions.

The challenge that now arises is whether the tensions caused by the crisis will be reflected in Community case law, reversing it, or if, on the contrary, European citizenship will be strengthened and used as an aggregation and deepening factor in a Europe increasingly divided by geographical and economic factors and atomized by the weakening of the principle of solidarity.

Finally, the inclusion in the texts of the Judgment *Rinau* demonstrates the sensitivity of the organizers of the collection and deserves a special nod.

The case entailed by itself three questions: how to manage the principle of effectiveness in a conflict between different Member State jurisdictions, such as adjusting the (historical)

time of justice to the demands of the (biological) time of a child and how to overcome the problem of multiplicity and inconsistency of decisions that the procedural arrangements facilitate and that, in matters of parental or educational guardianship, can prolong disputes *ad nauseam*.

But these questions are not the only factor that make this a singular case. With it, the eye is filled with colour: that of a Court, accustomed to issues of great economic dimension and legal complexity “thrilled” with a plea for humanity, a kind of *Kramer vs. Kramer*, in which the law is allied to equity to enforce the judge's decision that, according to Community legislation, is more inside the conflict and is able to find the exact place that addresses the child's best interests. For the first time, the web was filled with the protagonists of a family scene that does not “speak” “legal-Economics”, and outlined the drama and the conflict of affections of a simple story. On that day, it could be said that the Court perceived live as value was added to its jurisdiction at the service of citizenship.

The conference organized by the School of Law of Minho comes to an end with this publication. As for me, the feeling remains that I should not have been its target.

I am comforted by the idea that I was a pretext for an exemplary initiative, in several respects.

I thank the School, its Director, its faculty and its students for devoting me an undeserved attention.

I am grateful in particular to Professor Alessandra Silveira, Dear Friend, who sometimes finding me distracted from the truly important things, led the School to the Court, the Court to the School and, with limited resources, was able to expedite, in a time of waiting and alarm, the best of the Institutions.