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Juliane Kokott

An Interview

Juliane Kokott & Franziska Bachmann

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Prof. Dr. Dres. h.c. Juliane Kokott, LL.M. (Am. Univ.), S.J.D. (Harvard) has been an Advocate General at the Court of Justice, the highest Court of the European Union, since 2003. Previously, she was a professor of German and foreign public law, international law, and European law, last in St. Gallen in Switzerland. In the interview, she explains why, as a researcher, she is particularly happy with her current role as an Advocate General, why this position requires inner independence and a certain degree of composure, and why the value discourse is at the forefront of the Court's work. She also discusses the challenges she has overcome in her career and the attitude she adopts when faced with doubts or setbacks. The Advocate General and mother of six children offers further fascinating insights into her position at the Court of Justice and her personal journey.

Franziska Bachmann: *Thank you for having me here at the Court of Justice and for making time for this interview. A warm thank you also from the calendar project team for this opportunity.*

You have been an Advocate General here at the Court since 2003. Based on your experience, what best characterizes the role of an Advocate General? Which character attributes (qualities) should a person bring to this position, and which are especially useful in the daily work? To what extent does your role as an Advocate General differ from that of a Judge? What is the essential difference from your viewpoint?

Juliane Kokott: The essential difference, to begin with the last point, is that a Judge always works in a team, in chambers of three or five, in the Grand Chamber, or even in Plenum. This means that the Judges must coordinate with one another, they spend a lot of time in discussion and debate over the wording, which usually involves compromise.

An Advocate General, by contrast, spends the time that Judges dedicate to discussion, on studying case files and conducting legal research. I would say that the role of an Advocate General is closer to that of a professor and researcher. This is why I am particularly happy to be an Advocate General, since I am a researcher by nature. It would be difficult for me not to have enough time to explore legal issues more broadly. That is what I find particularly enjoyable and ultimately led me to become a professor.

You also asked which character attributes are useful. As a member of a court, inner independence is very important. And as a jurist, one should not merely reproduce decisions but always think independently. As a member of a constitutional court, one probably also needs to demonstrate a certain degree of composure, including reconsidering decisions made many years ago and, if necessary, approaching them from a new angle.

Franziska Bachmann: *You just mentioned that you are a researcher by nature. You completed a doctorate and a habilitation [qualification for teaching in higher education] in Germany and are a jurist trained in German law. You also have plenty of international experience – you completed both your LL.M. and S.J.D. in the United States. To what extent do you still have a German legal perspective (German "legal lens") when working as an Advocate General?*

Juliane Kokott: People say that Germans tend to think systematically. I would not consider that a "German" characteristic. Instead, one should simply think systematically. [*laughs*] In any case, I do not feel that I am looking through a German "legal lens", especially since I have indeed been trained and taught in Switzerland and the United States. Sometimes I also adopt an American legal perspective, which places

great emphasis on the separation of powers and adopts the concept of "judicial self-restraint". In this sense, my work draws from various legal systems. I have always very much enjoyed comparative law, and I even had the opportunity to teach it in St. Gallen (Switzerland). As a researcher, I strive to take into account all aspects whenever possible.

Franziska Bachmann: *Are you trying to create a balance in your approach to the law, by drawing on every aspect of your education and teaching, in order to best address the legal issues of EU law?*

Juliane Kokott: Yes, although one does not consciously consider every aspect. Rather, one refers to a specific provision of EU law that is being interpreted. Therefore, the influence from national legal systems is at most unconscious.

Franziska Bachmann: *To follow up on the previous question, and since you already hinted at this in your answer to the first question: To what extent are you in exchange with the other Advocates General? Or is that not really the case?*

Juliane Kokott: With regard to the Advocates General, we of course know each other, we interact a lot, we communicate – just as we do with the Judges. But in the end, we [the Advocates General] work on our cases alone. One would not go to another Advocate General and ask, "What's your view on this? Should I really approach it this way?" That would, in a sense, run counter to the nature of the Advocate General's role. The point is that each opinion should be penned by one and the same author. Every Advocate General should be independent, and the different legal cultures, perspectives and viewpoints that each of us brings should find expression. I do not represent Germany, but I have more knowledge about Germany; the Polish colleague knows more about Poland. All of this is meant to complement each other and not turn into the same thing.

Franziska Bachmann: *Going back to the beginning of your career here at the Court. You are the third woman ever to serve as an Advocate General. Was that a thought that crossed your mind back then, or did it only occur to you later, that you were one of the first women to hold this office? Was that particularly appealing to you? How did you come to take on the role of an Advocate General? Why did you decide to do it?*

Juliane Kokott: One cannot actually decide to do it. [*laughs*] You cannot just decide to become an Advocate General tomorrow; the position is offered to a candidate. And there are probably very few people who would not accept it. I did, in fact, ask whether I could continue my professorship, a role I truly valued, and the State Secretary said at the time, "That is really not possible, because it is simply too much, but you could probably manage it." But it is not possible.

And as for being a woman or not, I was already toughened up. I was the first woman to habilitate in Heidelberg in the field of constitutional law. I was one of the very few women, perhaps three among 400, in the German Association of Public Law Scholars [Staatsrechtslehrervereinigung]. At the Max Planck Institute, there were hardly any women at all.

And whether I am a woman or not, this was not anything I was very aware of. It only becomes apparent when one is discriminated against – for instance, when one hears, "If we are going to present a woman to the faculty, she has to be particularly good." Or when the habilitation thesis must be reviewed by five professors instead of just two. And so on.

Franziska Bachmann: *Let us move directly to your professorship. You already told us that you started out as a professor of German and foreign public law, international law, and European law, and that you last taught in St. Gallen in Switzerland. You also mentioned in your previous answer that you wanted to stay connected to the profession. To what extent are you still active in academia today?*

Juliane Kokott: In the first years of my work at the Court, I taught up to two or more courses in St. Gallen, in the form of block seminars over three consecutive days. Toward the end, these sometimes took place on, say, 20th, 21st and 22nd or 21st, 22nd and 23rd December, ten hours each day. But of course, that is an enormous workload. It is hardly possible anymore to teach regular university courses additionally.

When I came to the Court, even the President, at the time he was not President yet, but probably already Chamber President, still taught classes on Monday

mornings, as did the German colleague. I doubt whether any of us still teaches regular courses today. That does not exclude, however, giving talks. I do that with great pleasure.

Franziska Bachmann: *Would you also say, and you already hinted at this in your first answer, that your work as a professor is what prepared you best for the role of an Advocate General?*

Juliane Kokott: I think so, yes. The professorship, along with the many stays abroad, including in Geneva, where one speaks French. When I arrived here, I already knew many former Judges, current Judges, and constitutional Judges. And, of course, the case law as well.

Franziska Bachmann: *I have two specific questions regarding your work as an Advocate General, or rather about the cases. Is there a particular case that challenged you the most at the time or in retrospect?*

Juliane Kokott: The case concerning the Hungarian Sovereignty Law, for instance. It is quite recent, and it was challenging for me. Very challenging to cope with everything.

Franziska Bachmann: *What challenged you the most about it?*

Juliane Kokott: It was a kind of abstract judicial review of a law whose concrete application is still in its early stages. That is difficult, especially if one is here in Luxembourg and not in Hungary. And if one does not understand Hungarian. I prefer to consider my cases in their real-life context. I find it challenging to make far-reaching assessments from afar.

Franziska Bachmann: *Did you take any action to develop a better understanding, or is that simply not possible?*

Juliane Kokott: That is very difficult. I can exchange ideas at conferences, but of course not related to the case.

Franziska Bachmann: *Is there a case that has shaped you most in your role as an Advocate General or helped you develop your own approach?*

Juliane Kokott: Not really. My approach – my legal toolkit – that is something I already have. I suppose that it is rarely the case that a professor is shaped by a specific article. However, I can once more point out the difference between a professor and a member of a court. A professor could write long articles without much connection to reality. But that is not my style. I believe that the law should be useful to social coexistence. Therefore, I tend not to engage in overly abstract or detached theories. One must be concise. But is this a difference between court members and professors or between good and bad lawyers?

Franziska Bachmann: *I suppose it takes quite a bit of practice to work with such precision?*

Juliane Kokott: We sometimes have quite complex cases, especially in tax law, with complicated facts, or situations where a certain taxable person engages in complex tax planning. It can be a challenge to identify the key issues and to present the solutions clearly and understandably.

Franziska Bachmann: *With that, you have already described one of the major challenges of your work. What brings you the most joy in your work? Does that align with the challenges?*

Juliane Kokott: The greatest joy, firstly, comes from the variety of legal questions that are simultaneously current, practice-oriented, and important. Secondly, I enjoy discussing and solving these questions at such a high level. High level, because I have all the tools and assistance at my disposal. And I have very good counterparts. My Legal Secretaries are excellent. I have very good colleagues. I constantly meet highly qualified legal experts. I am actually meeting top jurists everywhere. For every single question, I have access to them, and that is, of course, fantastic.

Franziska Bachmann: *What does your everyday work look like? Is there a "typical" day at all – or is it always different?*

Juliane Kokott: Actually, it is always different. Sometimes there is an oral hearing, sometimes there is none. Or the Constitutional Court of Spain or the Supreme Court of the United States pays a visit. Or the Court visits the European Court of Human Rights. Frequently, there are sessions of the Administrative Committee and other in-person events. In between, there is time to study case files and work on decisions or opinions. And this varies as well. Sometimes one

works on two or three opinions at the same time. Sometimes one has more time for one opinion. Sometimes one moves through an opinion rather quickly. Sometimes there are about twenty versions of a draft opinion, sometimes the second version is the final one.

Franziska Bachmann: *And do you have regular meetings with your team? How is your team involved in the work?*

Juliane Kokott: I handle each case in tandem. I have organized my cabinet in such a way that everyone can work on what they enjoy as far as possible.

Together with Legal Secretary Professor David Hummel, I work on tax cases. Professor Hummel also knows a lot about national tax law, an important supplement. Legal Secretary Dr. Christoph Sobotta is a passionate environmental law expert and has a great deal of specialized knowledge. He was previously with the Directorate-General for Environment of the European Commission.

The other two Legal Secretaries, Dr. Hanna Schröder and Dr. Hanns Peter Nehl, are very experienced in competition law. Previously, they served as Legal Secretaries at the General Court, where they gained a broader expertise in competition law. In competition cases, the Court deals only with appeals, whereas the General Court carries out a more comprehensive review and also examines the facts.

Franziska Bachmann: *You have been at the Court of Justice since 2003. How has the Court changed over time?*

Juliane Kokott: It is quite obvious that the Court now comprises many more members. In 2003, when I started working at the Court, there were 15 Judges and eight Advocates General. Everyone knew each other. At the General Court, there was only one Judge per member state, i.e. 15. There were only about 38 "membres" altogether. Now the Court of Justice counts already 38 members: 27 Judges and eleven Advocates General. In addition, there are 54 Judges at the General Court. In total, there are now 92 Judges and Advocates General working at the Court of Justice and the General Court (compared to just 38 in 2003). This results in different group dynamics and enables as well as demands a different leadership of the institution.

Franziska Bachmann: *With regard to digitalization or overall administrative tasks, do you have an impression of how much this has changed?*

Juliane Kokott: Fortunately, I am relieved of most administrative work. And digitalization helps. In the past, I had to carry around files. Now, the files are digital. That is very good. This way, one always has them within reach. [*laughs*] This is a huge step forward. Apart from that, digital translation services are very helpful, I have been a big fan of DeepL for a long time.

Franziska Bachmann: *What concerns you most from your viewpoint as an Advocate General regarding the European Union and the EU legal order? What is the Court of Justice's focus now? Perhaps also considering the political or factual situation. What do you consider in your assessments?*

Juliane Kokott: Facts are, of course, taken into account. That is obvious. And beyond that, I try to separate law and politics. However, at the Court of Justice, the current focus is on enforcing the values of the EU. The Court seeks to assist states in finding the right path in relation to these values, including the rule of law. In this respect, the Court of Justice is in the process of reforming and restructuring itself into a constitutional court. That is why VAT law has been transferred to the General Court, and further areas are expected to follow, so that the Court of Justice can fully concentrate on the values and fundamental rights. Thus, the current focus at the Court of Justice seems to be on further developing the European constitution, especially fundamental rights, the rule of law, and the values.

Franziska Bachmann: *Moving away from your role as an Advocate General to your other role: You are also the mother of six children. In some interviews, reports and the calendar's short portrait, you are dubbed a role model for balancing family and career. You have also spoken very openly about this topic in other interviews [see, e.g., here]. I would be interested in how it came about that this topic was brought up. To what extent was this a conscious choice on your part?*

Juliane Kokott: Of course, I would not go to the Spiegel and suggest they do an interview with me. I was approached, but I deliberately said yes right away.

I find it is a pity if women think they must choose between a career and children. It is a pity if clever women do not have children. For me, it was also important that when I was as a student in the United States, I saw female professors with three children. I still remember how another female student said to me back then, "This shows that it is possible." That was the background to my "homestories" [i.e., reports about private life].

Franziska Bachmann: *Do you have the impression that the perception of balancing family and work has also changed over time here? Have you also been approached about this in your work environment?*

Juliane Kokott: I now meet many career women who have children. Half of the German Federal Constitutional Court's members are now women and there are many female court presidents in the higher ranks of the judiciary in Germany. A lot has changed, and fortunately, most of these women also have children. When it comes to investment banks, Germany still lags behind in international comparison. The childcare situation is, in part, dire, which makes the balancing of family and work quite challenging.

Nowadays, also, many people worry a lot and believe, e.g., that they can only afford to have children if each child has its own room right away. My neighbors had three children in one room, and we also had one room for two children at times. Around here, it seems that the time away from work is shorter than in Germany. With long career breaks, it is probably more difficult to balance a demanding career with having many children.

Franziska Bachmann: *Your calendar quote addresses self-doubt, setbacks, and how to deal with them. You mentioned in a previous interview that you had to apply for a scholarship even though your final grades had not been published yet. How do you deal with doubts or setbacks? Did you have to learn to handle them? How do you manage to keep going?*

Juliane Kokott: After all, we are not just defined by our grades. I always said that either I achieve this or something better will happen to me. One often does not even know what is best. One aims for a certain position, does not get this position, but a better one. That is my positive basic attitude, that I am not too much focused on one specific track, since there are so many paths.

I also have to admit that I always had people who truly believed in me, starting with my (grand)parents. My father told me that I could do everything better than him, which was not true. And my two mentors, Tom [Thomas] Buergenthal from the United States and Karl Doehring, told me in my 20s already that I would make it very far. If one has been raised that way, setbacks do not affect one as much. [...]

It is the trust that my parents had in me, and then other people as well. This trust gave me self-confidence, when I met people who threw massive stones in my path, which did indeed happen.

Franziska Bachmann: *Do you have a particular "Outstanding Woman", or perhaps multiple role models, from international, European, or constitutional law, who motivated you to act, to keep going?*

Juliane Kokott: As I mentioned, I have always been inspired by women who were professors, because that had been what I was striving for starting in my twenties, and who have children. Gertrude Lübbe-Wolff, a professor with four children, later a Constitutional Judge. Lori Fisler Damrosch. She was President of the American Society of International Law. I read an article of hers just yesterday. Very well written. She also speaks Russian. She is truly a remarkable woman, with three children. This is the woman my friend was talking about back then and said, "This shows that it is possible." And I thought, "Sure, that is right." And of course, there was Ruth Bader Ginsburg, and Mary Ann Glendon at Harvard Law School, who also held and holds high positions at the Catholic Church and has three children. I have always enjoyed meeting remarkable women. But even if they had not been there, I would have tried to become a professor anyway.

Franziska Bachmann: *What advice would you give to law students or doctoral candidates?*

Juliane Kokott: First of all, they should think about what they really enjoy doing. Is it truly law or could it be informatics, math or engineering, or maybe not pursue university studies at all. And when it comes

to law, one also needs to think about which field of law to choose.

I value the ability to think independently and not just reproduce what others said. However, I am afraid that one can get quite far just by such reproduction these days. I also appreciate it when people have interests beyond their work, such as a hobby or volunteering. Maybe this helps to get a different, fresh perspective.

Franziska Bachmann: *For those students who want to focus on public, European or international law, what would you recommend to them?*

Juliane Kokott: EU law is incredibly diverse. European and international tax law is certainly a good option. There is still a lot to explore. It is not just about technical issues, but the distribution of money, justice and democracy. That is why I find it interesting. But everyone has their own hobby, others prefer, e.g., labor law or social law or environmental law.

Franziska Bachmann: *As a final question, I wanted to ask for a legal or non-legal book recommendation. Is there a book that you would always pick up again?*

Juliane Kokott: I used to be an avid reader, and I still draw from that. But for the past few years, I usually have my computer and iPad on hand, so I do not even need to go to the library to do research. Unfortunately, this comes at the expense of literature.

Franziska Bachmann: *But is there a book that you perhaps read quite a while ago, one that you have good memories of?*

Juliane Kokott: Recently, I read in Tolstoy's War and Peace. I am fascinated by how many questions about life, questions of relevance then and now, are addressed in the characters' dialogues. In the end, one needs patience to read such long books.

Franziska Bachmann: *And with that, we come to the end of our interview. Thank you so much again for the fascinating insights!*

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