

# International Holocaust Remembrance Day Annual Lecture, The Hague, Peace Palace Academy Building

*Learning Lessons*  
Dineke de Groot<sup>1</sup>

## 1. Introduction

It is an honour to provide the keynote address at this 8th annual lecture. On its website, the organisation says that the annual lecture in The Hague “aims to delve into the profound impact of the Holocaust on international law, providing a meaningful platform for commemoration”.<sup>2</sup>

The key point of this address is about learning lessons from a life story as a poignant reminder of the Holocaust’s victims. What happened to the Holocaust’s victims is indescribably inhumane, shocking and horrible. By visualising the life story of a victim, awareness of what the Holocaust means to a human being and to the international community can be raised, and commitment to human dignity and freedom can be strengthened. It illustrates human virtues and values<sup>3</sup>, and depicts grief, suffering and mourning. In this speech, I will focus on the life and work of Lodewijk Ernst Visser.<sup>4</sup> He was the President of the Supreme Court of the Netherlands when the Nazis occupied the Netherlands.

## 2. Lodewijk Ernst Visser

### 2.1 The painting

In the current building of the Supreme Court of the Netherlands, a painting<sup>5</sup> entitled ‘Hoge Raad’ (‘Supreme Court’) depicts a crowded courtroom. The walls of this courtroom are covered with art-historical references to the development of Dutch law and the constitution. We see former politicians, scholars, heads of state and philosophers. In addition to justice, we also see injustice, aggression and violence. A row of judges seated at a long curved table divides the painting into two parts. Mostly, they are anonymous, fictitious judges. Except

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<sup>1</sup> Prof. mr. G. (Dineke) de Groot is President of the Supreme Court of the Netherlands, Endowed Professor on the Chair ‘Rechtspraak en conflictoplossing’ at Vrije Universiteit Amsterdam.

<sup>2</sup> Website [ihrd.nl](https://www.ihrd.nl): “*International Holocaust Remembrance Day (IHRD) is a globally recognized day of commemoration established by the United Nations General Assembly in 2005. Observed annually on January 27th, it serves as a poignant reminder of the Holocaust's victims while aiming to foster education and awareness regarding its historical significance and enduring lessons.*”

<sup>3</sup> Keynote Speech Mr. Koen Lenaerts, President Court of Justice of the European Union, Judicial Conference [EUnited in diversity](#) II, 2023, p. 18: “Values have come to the forefront of the recent case-law of the Court of Justice of the European Union (...). That does not mean (...) that liberal values were foreign to the initial stages of the European integration process. After suffering under totalitarian regimes and overcoming the atrocities of war, the founding fathers of the EU firmly believed that European democracies should come together and bring liberty and prosperity to their citizens, by setting common objectives and committing themselves to respecting mutually-agreed-upon rules and principles”.

<sup>4</sup> Much has been written about the life and work of Lodewijk Ernst Visser. Among others: J.A. Polak, *Leven en werken van mr L.E. Visser*, Athenaeum – Polak & Van Gennep, Amsterdam 1974; Corjo Jansen, met medewerking van Derk Venema, *De Hoge Raad en de Tweede Wereldoorlog. Recht en rechtsbeoefening in de jaren 1930-1950*, Amsterdam: Boom 201; Igor Cornelissen, *Tussen Lenin en Lucebert. Mathilde Visser, kunstcritica (1900-1985)*, Uitgeverij de Arbeidspers, Amsterdam Antwerpen 2018.

<sup>5</sup> Information on the painting is available at the website of the Supreme Court: <https://www.hogeraad.nl/over/gebouw/interactief-schilderij-helen-verhoeven/>.

from my illustrious predecessor Lodewijk Ernst Visser, who is seated in the middle. Mr. Visser was the first Jewish President of the Supreme Court.

## 2.2 Some characteristics

Visser was an excellent lawyer and judge, especially committed to international law and commercial law. His life and work are marked by the significance of the ongoing globalisation of law for a world in which humanity and justice can prevail. He was praised for his keen thinking, the goodness of his character, and his social commitment. He showed enormous courage before and during the Second Worldwar. As a Jew, he experienced social exclusion and isolation. I hope you will experience that Visser's keen, firm and pragmatic views on humanity and law, and his sense of community in a globalising world, still deserve our attention. In memory of the Holocaust's victims, and for inspiration in safeguarding and effectuating values, principles and rights in a rule of law based democracy.

## 2.3 A young lawyer

Visser was born in Amersfoort in 1871. He grew up in a prosperous Dutch environment, familiar with trade and politics and with Jewish traditions. After his law studies, his dissertation was on "The territorial sea", the strip of water along the coast over which the coastal state has authority. In 1609, Grotius' book 'The Free Sea' (Mare Liberum) described the sea as a free area where no one has any special rights, except for this territorial sea. Visser examined the position of the territorial sea in international maritime law. He took a stand against statements of others that he considered incorrect or inappropriate, in astute, clear and firm terms, just as he did in later life, during the Nazi persecution of Jewish people.

After a period as a solicitor in a law practice, he started as a civil servant at the Ministry of Foreign Affairs. In 1898, he got married. The couple had three children. They were an open-minded and liberal Jewish Dutch family. In 1902, Visser left the Foreign Office. He felt underestimated and noticed that he was being passed over for promotions because he was Jewish, and because he was not a member of the nobility. In other words, he experienced a lack of equality before the law, and social inequality.

## 2.4 A constitutional aspect

Like many other Jewish people, Visser suffered what in 1215 the Magna Carta had already declared inadmissible. More than 800 years ago, in 1215, the sealing of the Magna Carta Libertatum took place, in Runnymede, alongside the River Thames in today's English county of Surrey. The Magna Carta set limits on the power of the King, forced by a rebellious nobility. Limiting the power of a country's ruler was groundbreakingly progressive at the time. In Chapter 39-40, the Magna Carta says:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice."

Today, the Magna Carta is considered one of the most famous and important constitutional documents in history.<sup>6</sup>

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<sup>6</sup> The Magna Carta fell into obscurity over time. In the 17th century, a lawyer called Edward Coke (1552-1634) wrote a history of law, in which he presented the Magna Carta as England's ancient constitution. <https://historiek.net/magna-carta-1215-grote-charter/76409/>

## 2.5 Specialisation: international law and commercial law

Visser continued practising, lecturing and publishing on international law and commercial law. In 1903, he provided a public lecture on international public law at the University of Amsterdam, which I will discuss in more detail later. He edited a handbook on principles of Dutch commercial law.<sup>7</sup> He played a significant role in the modernisation of the Dutch commercial code.<sup>8</sup> He advocated the importance of sound legal regulation of the law regarding public limited companies “for the benefit of the healthy economic development of our country”. He argued that companies are indispensable to social life.<sup>9</sup> He drew attention to the fact that, in practice and for far too long, Dutch law governing companies was not sufficiently equipped to withstand a national or international financial crisis, and that The Netherlands was lagging behind other countries in this respect.<sup>10</sup>

His work on modernising the outdated Dutch commercial law reflects ideas that are also present in the Magna Carta of 1215. The Magna Carta provided significant guarantees and standards concerning trade and commerce. It intended to secure revenues from trading and to guarantee property rights, and to empower free movement of goods and merchants in times of peace.<sup>11</sup> Visser’s work reflects his view that commercial law should serve this freedom of action of a company and within a company. Government supervision should be aimed at preventing abuse of company law.

His attention for legal protection of the interests of all persons involved in a company, like current and future shareholders, directors, supervisors, employees and creditors, was inclusive and modern.<sup>12</sup> Currently, this view is part of established case law of the Supreme Court, for instance in a judgment from 2014: “In performing their duties, directors must (..) exercise due care with regard to the interests of all those involved in the company and its business, partly on the basis of the provisions of Section 2:8 of the Dutch Civil Code.”<sup>13</sup>

## 2.6 Judicial and social position

In 1903, Visser was appointed judge in the first instance court in Rotterdam. As an international port and trading city, this court has traditionally dealt with matters involving

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<sup>7</sup> This was published in 1904. Jansen mentions that it was well received, and refers to Molengraaff and Polvliet (C. Jansen, ‘Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)’, in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38), Deventer: Kluwer 2018/10.3).

<sup>8</sup> C. Jansen, ‘Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)’, in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38) Deventer: Kluwer 2018/10.3; J.M. de Jongh, *Tussen societas en universitas. De beursvennootschap en haar aandeelhouders in historisch perspectief* (diss. Rotterdam), Deventer: Wolters Kluwer 2014, p. 289.

<sup>9</sup> L.E. Visser, ‘Preadvies, Op welke wijze behorende Voorschriften van het Wetb. van Koophandel betreffende samenstelling en het behoud van het kapitaal der Naamloze Vennootschappen te worden herzien?’, *WPNR* 1902/1696, p. 35-77.

<sup>10</sup> L.E. Visser, ‘De Naamloze vennootschap en de wetgever’, *Feestuitgave bij WPNR* 1926/2947, p. 10-12.

<sup>11</sup> Lord Dyson, *Justice, Continuity and Change*, Oxford: Hart Publishing 2018, p. 276-277.

<sup>12</sup> C. Jansen, ‘Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)’, in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38), Deventer: Kluwer 2018/10.3.

<sup>13</sup> HR 4 April 2014, ECLI:NL:HR:2014:808, rov. 4.2.2, with reference to HR 9 July 2010, ECLI:NL:HR:2010:BM0976, *NJ* 2010/544 (ASMI), HR 12 July 2013, ECLI:NL:HR:2013:BZ9145, *NJ* 2013/461 (VEB c.s./KLM) and HR 14 September 2007, ECLI:NL:HR:2007:BA4117, *NJ* 2007/610 (Versatel I). Judgments are available at [www.rechtspraak.nl](http://www.rechtspraak.nl) by entering the ECLI-number.

international public and private law, such as maritime law and commercial law. In 1915, when he was 43 years old, he was appointed judge in the Supreme Court. In 1933, he was appointed vicepresident, and in 1939 president.

Visser perceived the danger and the injustice of German National Socialism from an early stage. He was committed to the Jewish people and to their communities. He held numerous leadership positions in Jewish organisations.<sup>14</sup> From 1933, he was a member of the Committee for Special Jewish Interests. This Committee provided assistance to Jewish refugees.<sup>15</sup> In 1933, Visser was the first lawyer in the Netherlands to write about antisemitism when he commented on a German court judgment in which the exclusion of Jewish companies from trade was not considered to be in breach of competition law. This was contrary to the prevailing opinion in Germany at the time, according to which issues unrelated to the supply of goods could not be invoked.<sup>16</sup>

## 2.7 Equality before the law

When the German Reichstag passed the Nuremberg Laws on Sunday, 15 September 1935, Visser took public action. With the Nuremberg Laws, the Nazis pretended that the persecution of Jewish people had a legal basis. On Thursday, 19 September 1935, the Committee for Special Jewish Interests organised a protest demonstration in the Apollo Hall in Amsterdam. Approximately 6,500 people were present. In his speech and shortly afterwards in an article in 'De Opbouw', Visser spoke out against the Nuremberg Laws, using legal and human arguments and clear language. Visser never wanted to accept any distinction in the position of Jewish and other Dutch people. In the years that followed, he continued to speak out and take action against the Nazi distinction between Jewish and other people.<sup>17</sup> He personally experienced this alarming distinction even before the Netherlands was occupied by the Nazis. After being appointed president of the Supreme Court in 1939, the newspaper *Haagsche Post* mentioned that Dutch national socialist (NSB) media had written that Visser should not have been appointed because he was Jewish. The newspaper, however, quoted the statesman Thorbecke and said that, fortunately, competence and character still carried the most weight in appointments in the Netherlands, and that it was gratifying that this had once again been clearly demonstrated in the appointment of Visser as President of the Supreme Court. This is an example of the importance of press freedom for the rule of law.

## 2.8 Honoured but excluded

On New Year's Eve 1939, Visser spoke openly on the radio about the threat posed by Germany to the Netherlands. In March 1940, the Supreme Court celebrated Visser's 25 years

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<sup>14</sup> For instance at Keren Hajesod (the Dutch Palestine Construction Fund), at the Board of Trustees of the Dutch Israelite Seminary (the training institute for Dutch rabbis in Rotterdam), and at the Jewish Retirement Home in The Hague, the predecessor of the current Jewish residential care centre named after him, Mr L.E. Visserhuis.

<sup>15</sup> C. Jansen, 'Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)', in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38), Deventer: Kluwer 2018/10.3.

<sup>16</sup> *Weekblad van het Recht*, 27 June 1933. See: Corjo Jansen, 'De Duitse Themis op de pijnbank. Het Duitse nationaalsocialisme in het Weekblad van het Recht en het Nederlands Juristenblad (1933-1940)', *Nederlands Juristenblad* 2010/1461; Corjo Jansen, met medewerking van Derk Venema, *De Hoge Raad en de Tweede Wereldoorlog. Recht en rechtsbeoefening in de jaren 1930-1950*, Amsterdam: Boom 2011, p. 53.

<sup>17</sup> Igor Cornelissen, *Tussen Lenin en Lucebert. Mathilde Visser, kunstcritica (1900-1985)*, Uitgeverij de Arbeidspers, Amsterdam Antwerpen 2018, p. 17; J.A. Polak, *Leven en werken van mr L.E. Visser*, Athenaeum – Polak & Van Gennep, Amsterdam 1974, p. 15 en 17.

of service to this court. In the presence of high-ranking officials<sup>18</sup> and the members of the Supreme Court, he was honoured, and addressed in collegial and friendly terms.<sup>19</sup> There was a festive dinner and an article in the newspaper. Shortly afterwards, the Dutch National Socialists (NSB) filed a complaint against him for defamation. The Public Prosecutor's decision not to prosecute Visser was followed by antisemitic reactions in National Socialist media.<sup>20</sup>

Two months later, on the morning of 10 May 1940, Visser opened the session of the civil chamber of the Supreme Court in the building on the Plein in The Hague. Behind him, engraved in the wall, was the Latin motto that is still publicly displayed in the Supreme Court building: *ubi iudicia deficiunt, incipit bellum*. There are several translations of this saying, which comes from Grotius' book *De iure belli ac pacis*. Loosely translated, it means that where judicial decisions are lacking or inadequate, violence or war is imminent. With this saying on the wall behind him, Visser said at this hearing on 10 May 1940:

“The Supreme Court is now meeting as it has never met before in its hundred years of existence, in a time of war. The Netherlands has been the victim of an attack, as treacherous as it is unmotivated. While we are gathered here, our fellow countrymen are being murdered.”

His speech appeared in the newspaper that evening. For Visser, the most difficult period of his life began. For the Supreme Court, a dark chapter in its history since 1 October 1838 began. As recently as March 1940, the Supreme Court had honoured Visser with pride and joy. In autumn 1940, when Aryan declarations had to be completed, the Supreme Court did not respond to pressure from its surroundings to refuse and to set an example for others. The Supreme Court did not publicly defend Visser and other Dutch Jews. Professor of international law B.M. Telders wrote to Visser on 17 October 1940:

"This concerns the beginning of a very serious violation of the limits imposed on the occupying powers, a violation that could have immeasurable consequences for countless Dutch citizens. The position of the Supreme Court in this matter is of the utmost importance as a precedent for all concerned. The purpose of this letter is therefore to urge the Supreme Court to give serious consideration to the issue and not to allow considerations of expediency or formalism to overshadow the great importance of principle in this matter. It is, of course, easier to “swallow” everything in these times, but it is highly questionable whether this is the proper way to fulfil one's duty as a Dutch citizen.”

Others also took action and warned against signing, including an authoritative lawyer like Cleveringa.<sup>21</sup> But those who could have set an example did not do so. This does not merely concern members of the Supreme Court. At that time, Nazi policy and decisions in the Netherlands were carried out under joint responsibility of German military and civil servants, and the Dutch secretaries-general insofar as they were still at their posts. The Dutch

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<sup>18</sup> Like Minister of Justice P.S. Gerbrandy, and two former presidents of the Supreme Court, A. Fentener van Vlissingen and Rh. Feith.

<sup>19</sup> By Vice-President Kusters, Attorney General Berger and Dean of the Bar Van Doorn (J.A. Polak, *Leven en werken van mr L.E. Visser*, Athenaeum – Polak & Van Gennep, Amsterdam 1974, p. 16); C. Jansen, ‘Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)’, in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38) chapter 10, Deventer: Kluwer 2018.

<sup>20</sup> C. Jansen, ‘Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)’, in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38) chapter 10, Deventer: Kluwer 2018.

<sup>21</sup> Job de Ruiters, *Jan Donner jurist. Een biografie*, Amsterdam: Boom 2003, p. 185; Corjo Jansen, met medewerking van Derk Venema, *De Hoge Raad en de Tweede Wereldoorlog. Recht en rechtsbeoefening in de jaren 1930-1950*, Amsterdam: Boom 2011, p. 90-94.

government and the Queen had left the country in May 1940. They were in London. At the end of August 1940, the Dutch secretaries-general were instructed by the Nazis not to hire Jewish people as civil servants any more. They told the Nazis that this instruction was contrary to Article 5 paragraph 1 of the Dutch Constitution (“Every Dutch citizen is eligible for appointment to any public office”). Then, the Nazis changed the Dutch Constitution. The secretaries-general accepted the strategy whereby National Socialism shaped injustice into law without democratic legitimacy and without constitutional safeguards. In our time, we call this the normalisation of what is not normal, and should not be considered as normal. They started to implement the instruction not to hire Jewish people as civil servants.<sup>22</sup> Mid-September, the secretaries-general were instructed to provide an overview of all Jewish civil servants. They decided to submit a form to all civil servants, on which everyone had to indicate whether or not they were Jewish. The majority of civil servants filled in the form. At the end of November 1940, the secretaries-general provided the overview to the Nazis. They were well aware of the forthcoming dismissal of Jewish civil servants, according to Nazi instructions. Visser was suspended at that time, and he was dismissed with effect from 1 March 1941,<sup>23</sup> a few months before reaching retirement age in 1941. The signing of the Aryan declaration by Supreme Court members affected him more deeply than the dismissal itself.

## 2.9 Courage

One anti-Jewish measure after another followed. The role of Dutch civil servants, judges, solicitors, notaries, railways etc. has been examined in detail. The research results illustrate the now well-known but profoundly chilling picture that Jewish people in the Netherlands were excluded, isolated, and deported to prisons, concentration camps and the boarder by a well-organised bureaucratic and authoritarian apparatus. Stephen Steinmetz wondered in his study on the role of the secretaries-general what factors determined these democratically minded, intelligent men who respected the constitution, to cross the line? He identified as these factors: bureaucratic reflexes, like loyalty and obedient execution, short-sightedness, naivety, antisemitism, and a failure to recognise one’s position as a role model. He argues that even when the separation of powers has been abolished and the administration of justice is under threat because the Nazi perpetrators act with impunity, the question remains: are you there for everyone?<sup>24</sup>

Visser was one of those who tried to turn the tide. After his forced departure from the Supreme Court, he remained steadfast and fearless in his commitment to his Jewish fellow citizens. He became chairman of the Coordination Committee, which was established by the Jewish religious communities in December 1940 to represent the interests of Jewish people affected by Nazi measures. In 1941, the Committee took strong action against, for example, the separation of Jewish and non-Jewish pupils in schools. At the end of October 1941, the Coordination Committee was dissolved by order of the occupying forces.

In February 1941, the Jewish Council for Amsterdam was established by order of the Nazis. From October 1941 onwards, its remit covered the whole of the Netherlands. Visser was highly critical and dismissive of the Jewish Council, which received orders from the Nazis to persecute Jewish people. In his correspondence with David Cohen, he made clear that, in his opinion, the Jewish Council was on the wrong track.

Visser refused to accept an identity card marked with a J. He advised Jewish people on how they could draw up documents, for example through a reliable solicitor or notary, in order to try to escape the measures imposed by the Nazis. He tried to stop the deportations of

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<sup>22</sup> Stephan Steinmetz, *De tien van Den Haag, Topambtenaren tijdens de bezetting*, Boom 2025, p. 91-96.

<sup>23</sup> Stephan Steinmetz, *De tien van Den Haag, Topambtenaren tijdens de bezetting*, Boom 2025, p. 96-98.

<sup>24</sup> Stephan Steinmetz, *De tien van Den Haag, Topambtenaren tijdens de bezetting*, Boom 2025, p. 240-241.

Jewish people. He was familiar with the dates on which Jewish people had been arrested, how many people were involved and where they had been taken. In 1941, he repeatedly informed the secretaries-general of what he had learned, like the fact that large numbers of Dutch Jewish people who had been deported to Mauthausen were being murdered. He called on them to take responsibility for the welfare of *all* Dutch people and asked for their help. He even tried to arrange a personal meeting with General Commissioner Rauter. To do so, he ventured into a ministry on the Plein, where the Nazis were in charge. He wrote a letter in fluent German to Rauter, which he signed with “President of the Supreme Court of the Netherlands (des obersten Gerichthofes der Niederlande) a.D.” *Außer Dienst*.<sup>25</sup> The secretaries-general discussed the information provided by Visser and after some time, one of them talked to Nazi authorities.<sup>26</sup> As far as we know, the efforts of Visser were unsuccessful, but what he did, was incredibly courageous and demonstrated how strongly he felt that he had to act and could not stand by and watch. His efforts resulted in a threat of imprisonment. On Saturday, 14 February 1942, Visser received a letter from the Jewish Council, signed by David Cohen. It read:

"The representative of the Reich Commissioner for the City of Amsterdam has informed us that you have approached Mr. Frederiks, Secretary-General of the Interior, and informed him of the plans to transfer Jewish people from other places to Amsterdam and Westerbork. (...) He has informed us that you are prohibited from doing so on pain of transfer to a concentration camp and has requested us to inform you of this."

Visser replied the same day:

"I am deeply impressed by the humiliation that this assignment has caused you, who are familiar with the history of these steps."

More than 700 years after the sealing of the Magna Carta, Lodewijk Visser was outlawed, and deprived of his standing, as one of the victims of the Holocaust. Three days later, on the afternoon of Tuesday, 17 February 1942, Visser died suddenly at his home in The Hague. The funeral took place on Friday at the Jewish Cemetery in Overveen. Presumably, only three members of the Supreme Court attended the funeral.<sup>27</sup>

### **3. The role of a Supreme Court to secure firmly the commitment to the rule of law**

#### 3.1 Jurisdiction

Some weeks before his death, the Supreme Court delivered a judgment which seriously compromised its authority anew. To assess what happened, we need some context of the Court's jurisdiction.

From the 15th century, predecessors of the Supreme Court could administer the highest level of justice. The Supreme Court exists since 1 October 1838. When World War II started, the jurisdiction of the Supreme Court was regulated in such a way that only violations of a

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<sup>25</sup> J.A. Polak, *Leven en werken van mr L.E. Visser*, Athenaeum – Polak & Van Gennep, Amsterdam 1974, p. 21 e.v.; C. Jansen, 'Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)', in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38) chapter 10, Deventer: Kluwer 2018.

<sup>26</sup> Stephan Steinmetz, *De tien van Den Haag, Topambtenaren tijdens de bezetting*, Boom 2025, p. 247.

<sup>27</sup> Corjo Jansen, met medewerking van Derk Venema, *De Hoge Raad en de Tweede Wereldoorlog. Recht en rechtsbeoefening in de jaren 1930-1950*, Amsterdam: Boom 2011, p. 32-34.

statute were grounds for annulling a contested court judgment. It took until 1963 before the jurisdiction was extended to include full administration of justice.<sup>28</sup>

The jurisdiction of the Supreme Court between 1838 and 1963 contrasts with the ideas in the Magna Carta. Although the Magna Carta was part of the social and economic conditions of the thirteenth century, it reflects principles that have influenced the development of modern rule of law based democratic systems. It includes the principles of access to justice, due process and fair trial. It indicates proportionality as an element of the interpretation and application of the law. It says that justice should be provided local, that judges should know the law and that only judges should sit in judgment.<sup>29</sup> Instead, between 1838 and 1963, due to the limited and formal grounds for annulling a contested judgment, it could be hard for the Supreme Court to ensure that justice was done, and that effective legal protection was provided in the circumstances of the case.

Before Visser became a member of the Supreme Court, he was among the lawyers who criticised the consequences of adhering strictly to the letter of the law, without paying enough attention to the spirit of justice when interpreting and applying a provision of a statute.<sup>30</sup> This strict approach was abandoned in a judgment of 1919 in the well-known Lindenbaum/Cohen case.<sup>31</sup> Visser was one of the five justices of the panel deciding the case. In this groundbreaking and still important ruling, the Supreme Court decided that an unlawful act is not only an act that is prohibited by law, but also an act that is contrary to public morality or to the care that is appropriate in social intercourse.

### 3.2 Judgment of 12 January 1942 (“Toetsingsarrest”)

During World War II, the lack of jurisdiction on the broader concept of domestic law and international treaties played a difficult role once again. In a judgment of 12 January 1942,<sup>32</sup> some weeks before Visser passed away, a judgment in a criminal case equated a Nazi regulation with an act of parliament, even though Nazi regulations had not been established by parliament. Furthermore, it ruled that the Supreme Court had no jurisdiction to review these Nazi regulations against international law, like the 1899 Regulations concerning the Laws and Customs of War on Land.

It was arguable to place this judgment within the legal debate before and during World War II on the limited role of courts in relation to the legislator and in relation to international law. However, lawyers disputed the validity of the specific arguments in the judgment on reasonable grounds. The Supreme Court itself was criticised by lawyers and within society for not taking sufficiently into account the broader impact of this judgment, for not taking a leading role in the resistance against the unlawful behaviour of the Nazis, and for not giving the opportunity to challenge the legality of Nazi regulations in other cases. Even though other aspects could explain the Supreme Court's stance, like the danger of openly criticising the occupier, or the need to keep the composition of the Supreme Court as long as possible in

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<sup>28</sup> Since 1953, review in cassation comprises violations of international treaties, and since 1963, it comprises also violations of the broader concept of domestic law, as well as violations of rules of procedure and rules for the reasoning in a judgment.

<sup>29</sup> Lord Dyson, *Justice, Continuity and Change*, Oxford: Hart Publishing 2018, p. 276.

<sup>30</sup> An example concerns a judgment of the Supreme Court in 1910 in a tort case. The Supreme Court ruled that it was not unlawful to refuse to turn off the main water tap after a water pipe broke down overnight in a warehouse for leather clothes, because the Dutch Civil Code provision on tort clearly spoke of violations of legal duties or the infringement of another's rights, and no specific provision prescribed this turning off the main water tap in a case like this. HR 10 June 1910, ECLI:NL:HR:1910:1 (*Zutphense juffrouw*).

<sup>31</sup> HR 31 January 1919, ECLI:NL:HR:1919:AG1776.

<sup>32</sup> HR 12 January 1942, ECLI:NL:HR:1942:244.

their own hands, ultimately, the authority that should emanate from the rulings of a supreme court suffered seriously.<sup>33</sup>

### 3.3 An independent judiciary

After the war, this authority partially had to be rebuilt by the Supreme Court. At the same time, the international community established the peace project of a new international legal order, with the horrors of the Holocaust still clear in their minds. The European Union was created as a peace project, which it still and firmly is. The Council of Europe created the European Court of Human Rights (ECtHR), the only international human rights court equipped with a mechanism for the implementation of its rulings by states. Members of the Supreme Court actively participated in these developments.

It is now standing case law of the ECtHR that the aim of upholding the fundamental principles of the rule of law and the separation of powers implies a need to maintain public confidence in the judiciary and to safeguard its independence vis-à-vis the other powers.<sup>34</sup> Courts themselves must inspire confidence in the public in a democratic society. Judicial ethics are a major part of providing rule of law based protection to people, including persecuted judges. The United Nations Bangalore Principles provide a global framework for ethical judicial conduct to ensure independence and public confidence. The United Nations Special Rapporteur on the Independence of Judges and Lawyers monitors, reports, and advises on threats to judicial independence worldwide. Political interference with the independent judiciary without “basic factual premises”<sup>35</sup> has not disappeared. Solidarity amongst judges is indispensable when judges are attacked for their identity or their judgments. Visser lacked this judicial solidarity, as from May 1940. That is sad and chilling. A strong judicial dialogue is now part of the international legal order. At Visser’s time, this did not exist. For instance, judges from all over Europe use to gather for the opening of the judicial year of the ECtHR in Strasbourg, and discuss rule of law issues; and they gather from all over the world for the opening of the judicial year of the International Criminal Court. The serious political attacks currently being levelled at both courts would probably have been sharply criticised by Visser. At this point, his lecture on international law, in 1903, turns up again.

## 4. Visser’s view on the interference of human interaction, communities and law

International law now extends to many aspects of the relations between states on the one hand and their subjects on the other. When Visser provided his lecture on public international law in 1903, international law separated relations between states from people. His lecture was about the substance of the international community. It is intriguing to learn about his profound analysis of the relationship between international law and domestic law, based on the individual and social relationship between people, communities and states.

Visser mentioned that people cannot and do not live without interacting with each other on the domestic and the international level. This interaction is dynamic and leads to communities that constantly change composition. He argued that the international community

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<sup>33</sup> Corjo Jansen, met medewerking van Derk Venema, *De Hoge Raad en de Tweede Wereldoorlog. Recht en rechtsbeoefening in de jaren 1930-1950*, Amsterdam: Boom 2011, p. 121-134.

<sup>34</sup> ECHR-KS Guide on Article 6 of the Convention – Right to a fair trial (civil limb) ([www.echr.coe.int](http://www.echr.coe.int))

<sup>35</sup> See (Council of Europe) SG/Inf(2025)29 – Speaking notes of the Secretary General and the Deputy Secretary General to the 1539th meeting of the Ministers’ Deputies, 7 October 2025 (<https://search.coe.int/cm/eng#%7B%22CoEIdentifier%22:%5B%22091259488028c6b1%22%5D%2C%22sort%22:%5B%22CoEValidationDate%20Descending%22%5D%7D>).

extends both to states and their subjects. According to Visser, the international community is not only an association of states, but a community of subjects. Thus, both states and people can be subjects of international law. Sixteen years later, in 1919, this modern view was expressed in a groundbreaking judgment, in which the Supreme Court accepted that a provision of international law may be directly invoked for the legal protection of a person, even when the provision is part of an international treaty between state actors.<sup>36</sup>

Some of Visser's observations in his 1903 lecture are still relevant today. He said: "Compliance with the rules of conduct that govern international society, depends on the good will and the sense of duty of states, qualities which, while not entirely absent, are, as has been repeatedly demonstrated, insufficient to ensure peaceful coexistence." In his lecture, he displayed the same attitude he showed later on, when he stood up for the interests of Jewish people and Jewish communities throughout his life. His attitude places human freedom and human dignity at the centre. He said: "When considering international affairs, our sense of justice is repeatedly shocked for two reasons. Firstly, because we see events taking place that we consider to be unjust, but also because that injustice is neither punished nor is there even the possibility of it being punished." And he said: "Although vigilante justice can never be entirely ruled out, it is unnecessary for it to occur, as it does now, through almost unrestrained armed violence."

Visser thought that it would be highly unwise, given the numerous unknown and unpredictable factors on the international stage, to attempt to predict what the future holds with regard to the organisation of the international community, and how the idea of community will develop in the short or long term. He said, in 1903, that the horrors of a single terrible war can contribute more to this than years of peaceful labour, but that there is no reason to despair of the organisation of the international community, and that it is our duty to cooperate in this endeavour.

## 5. Closure

Since 2015, the Jewish Heritage Foundation, in collaboration with the Supreme Court, has been organising the Mr. L.E. Visser Lecture in the Supreme Court building. Prior to these lectures, the President of the Supreme Court gives a speech. At the sixth lecture, I said that the Supreme Court cannot make amends for what happened. Not by naming the large courtroom after Visser, not by explaining his central place in the painting 'Hoge Raad' to visitors, not by having a portrait of Visser in the Supreme Court president's office. We do these things, and today I am telling about his life and work, because we must not forget, and so that we do not forget, the injustice that was done to someone who represented the best that the Supreme Court of the Kingdom of the Netherlands could ever have. In this way, we keep the memory alive and try to learn from the past. Learning lessons from the Holocaust is what we owe to the Holocaust's victims and their loved ones. Learning lessons is what we do to inspire each other in safeguarding and effectuating values, principles and rights in a rule of law based democracy. It has been written that Visser always kept hoping for better times for Jewish people.<sup>37</sup> Not only in his hope, but also in his drive for justice, humanity and practical wisdom, he is a shining example. It is up to us today to follow his example, his unyielding and fearless attitude when it mattered, and the inspiration he found in human dignity and the rule of law.

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<sup>36</sup> HR 3 March 1919, ECLI:NL:HR:1919:126 (*Grenstractaat Aken*).

<sup>37</sup> E.g. C. Jansen, 'Facetten uit het bewogen leven van Lodewijk Ernst Visser (1871-1942)', in: L.E. de Groot-van Leeuwen e.a. (red.), *Het verhaal van de rechter, Over de plaats van de rechter in de literatuur, samenleving en rechtszaal. Liber amicorum voor Hans den Tonkelaar* (Staat en Recht nr. 38) chapter 10, Deventer: Kluwer 2018.