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The role of the (supreme) court judges in a state governed by the rule of law

Introduction

Ibu-Ibu dan Bapak-Bapak, selamat pagi. Adalah sebuah kehormatan bagi saya dapat menjadi tamu anda di sini untuk berbicara mengenai jurisdiksi, peradilan dan negara hukum.

And now I will proceed in English. It is a huge pleasure for me to have been invited today to speak to such a broad and mixed audience. For a number of years, there has been cooperation between the supreme courts of Indonesia and the Netherlands, the Makhamah Agung and the Hoge Raad. A delegation from the Makhamah Agung has visited us in the Netherlands on several occasions, and this is the third occasion on which a delegation from the Supreme Court of the Netherlands has paid a visit to Indonesia, in the framework of that cooperation. I myself have only been President of the Supreme Court for eighteen months, so for me this is the first time I have visited Indonesia, in this context. However, this visit is anything but my first

contact with Indonesia. My grandmother spent a great deal of her youth on Java, and recounted numerous tales of that part of her life. I myself have spent several enjoyable holidays on the enchanted Island of Bali, and I love Indonesian food. In the Netherlands, I attended a course on Indonesian cooking, taught by a lady, a kokki of Indonesian origin. So I am fond of making ayam setan, sambal goreng buncis and cendol.

Today, however, I am here to speak with my Indonesian colleagues and with others here in the hall, in order to exchange thoughts about the way in which judges, and in particular supreme court judges, can fulfil their tasks as successfully as possible. Several years ago, in 2011, the Makhamah Agung introduced the chamber system. Many other countries, including the Netherlands, already operate a similar system at their supreme courts. On the basis of this system, judges are able to specialise further, and in that way contribute to a higher quality of judicial decisions. A chamber system also offers more opportunities for increasing the consistency and predictability of the case law from the supreme courts. For that reason, the introduction and expansion of this system in Indonesia deserves our warmest support. In that light, we are more than willing, as part of our cooperation project, to share our experiences of the system in the Netherlands with our colleagues at the supreme court here. It is not our aim to tell them what they should be doing. We come here to exchange our experiences and ideas and hope that this may offer inspiration for our colleagues here. At the end of the day, it are the judges here who, within the legal system of Indonesia, and with respect for the culture and customs which have arisen within that system,

decide on how judges here can best fulfil the requirements of a sound judicial system.

Today, I wish to speak to you about the role of the judge, and in particular the supreme court judge in a democratic state based on the rule of law. In my judgement, that is a shared characteristic of our two countries: our striving for a democracy based on the principles of the rule of law.

2. The concept of the rule of law (general)

It is relatively easy for any country to claim that it is democratic, and respects the rule of law. Things become more difficult when you are asked to precisely explain the content of this concept. The rule of law after all is also invoked by people whose primary goal is to represent their own interests, or to win a case.

Nonetheless, I will attempt to define the terms democracy and rule of law.
Democracy demands that in the establishment of rules, in particular legal rules, the preferences of the people, or at least of the majority of the people, are respected. This does not mean however that a majority can always impose its will. I will come to that later. The rule of law is directly related to democracy. After all, democratically adopted rules are all well and good, but have no true value unless they are applied in practice. In a state governed by the rule of law, those democratically adopted rules are indeed put into practice. Decisions are taken and the behaviour of individuals is effectively

governed by these rules. Decisions are not governed by arbitrariness, not by random judgements of those whose task it is to decide. And they are also not governed by the personal interests of these individuals, be they financial or otherwise, nor by their wish to award favours to or specifically frustrate the interests of certain individuals. In that sense, for example, the rule of law means that tax audits are not abused to make life difficult for political opponents. The rule of law is then the most honest form of society. It is also a question of equality before the law. If decisions are taken according to the rules consistently, everyone will be treated in the same way, in comparable circumstances. In making that claim, I assume that the rules themselves are in accordance with the principle of equality and as such contain no discriminatory elements. A society in which decisions are taken in accordance with democratically adopted rules is also more predictable than a society in which a great deal depends on the arbitrariness or personal preferences of the decision makers. It is therefore of huge importance for legal certainty that a state is governed by the rule of law. It is no coincidence that the higher a country scores on the rule of law index, the greater the degree of that country's economic prosperity. Investors will be more willing to invest their money in a project if it is clear which rules will actually be applied and enforced, and if they can be confident that this will take place in a fair and honest manner; and indeed that they can start and continue their activities without being required to pay considerable sums of money to individuals who decide on behalf of the state. That same legal certainty also means that the rules must be sufficiently stable to ensure that those affected by the rules can rely upon them. Furthermore, investors must know that in

the event of a conflict with a contract partner or with the government, they can turn to an impartial, independent and fair court of law. Also important in that respect is that the judge will arrive at his or her decision within a reasonable period of time. Of equal importance is the fact that an irrevocable decision by the judge truly is the final word, and that it will not be revoked, or at least only under very exceptional circumstances, following further legal proceedings. Later in my lecture I will return in more detail to the importance of the independent administration of justice.

All the above are illustrations that the rule of law is not a theoretical plaything of judges or other legal experts, but instead it is one of the most fundamental preconditions for a peaceful and prosperous society. Just consider for a moment what it means for the prosperity of a country if building permits are issued for the construction of houses and apartment buildings which do not comply with the building regulations, and which as a consequence collapse in the face of even a minor earthquake.

3. Separation of powers

The rule of law can only truly be said to exist if the state is also required to comply with the rules, does so, and can be forced to do so. Each year, the World Justice Project draws up the Rule of Law index, referring in that index to the restriction of the power of government, as the first relevant factor. Such a restriction is not self-evident. Government officials and government bodies do not always automatically tend to stick to the rules. After all they

have power, and as was once said, power corrupts, and absolute power corrupts absolutely.

To avoid the arbitrary or irregular exercise of power, it is therefore essential that power within the state not be concentrated with just one body, but be shared across different powers, who will exercise a certain degree of supervision in respect of one another. That process of supervision results in checks and balances.

The importance of such checks and balances was already referred to hundreds of years ago by the French writer Montesquieu, "Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go (…) It is necessary from the very nature of things that power should be a block to power".

To ensure a sound balance, a distinction is made between three tasks and the related three powers within the state: first the legislative power: making the laws (parliament, often together with the government), second the executive power: implementing the laws (the government and local authorities) and third and last the judicial power: deciding on who is in the right, if in an individual case, a dispute arises concerning the application of the law (the law courts). This principle of separation of powers equally applies if power lies with a democratically elected majority. Specifically a government which has the best intentions for its citizens, and is motivated to achieve explicit objectives, runs the risk of not being entirely scrupulous in applying the rules. For that reason, even a democratically elected government requires controls. Way back in the 18th century, the American James Madison expressed this situation perfectly. "If angels were to govern man, neither

external nor internal controls on government would be necessary. (…) A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."[1]

If the state is structured in such a way that sufficient checks and balances are in-built, these three powers do control one another to a certain extent, and thereby maintain a balance. It is not so much a question of a sharp, dogmatic separation between the powers, along the lines of Chinese walls. Nor should all connections or contacts between the powers be excluded. The essence is that an effective balance is achieved between the various authorities. Communication between them on issues that affect the demarcation of their powers is valuable. Communication in the form of a dialogue with respect for one another's authority generates far more benefits than a situation in which communication stagnates, and all parties revert to a monologue that essentially fails to penetrate the mind of the other.

4. The importance of the independent administration of justice

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[1] The Federalist no. LI (Everyman's ed. page 264.

As already stated, one of the three state powers is the judiciary. Smooth functioning of judicial power is of key importance for the smooth functioning of society as a whole. Just imagine a society without courts and judges. The result would be chaos; compare it to a football match without a referee.

If there were no courts and no judges, victory would not go to the party who has justice on his side; instead, the law of the jungle would prevail. Or citizens would take the law into their own hands. The course of things would no longer be based on clear rules laid down in advance, but would instead be governed by emotions, and feelings of revenge that can be entirely arbitrary. Even the most reasonable of people can become unreasonable if he or she is wronged. The role of the courts is to offer a counterweight to such tendencies and to find peaceful solutions. The statement by the Dutch legal scholar Hugo Grotius, that appears on the building of our Supreme Court, is symbolic in this instance. Ubi iudicia deficiunt incipit bellum. Where judgements cease, war begins. Of course, no court can guarantee world peace, in the same way that criminal law cannot succeed in preventing murder. However, an approach to criminality based on clear rules and procedures is many times better than a world in which a criminal can continue with his practices like a thief in the night, or is at the mercy of the irrational revenge of the local population.

The administration of justice clearly affects the other powers of the state. It affects the position of the executive, in that courts are required to pass judgement on the legitimacy of actions of government, thereby clearly

implementing checks and balances. Take for example the cases that appear before the administrative chamber. In my own field of fiscal law, I could refer to the numerous proceedings initiated by citizens against a tax assessment imposed on them by the inspector of taxes. And then there is criminal law: within that part of the law, judges are time and again called upon to pass judgement on the soundness of the charges put forward by the public prosecutor, in the trial before them.

The administration of justice also affects the position of the legislative power. The courts interpret the law, and as a consequence, on the basis of specific cases give shape to that law. In addition, in any case in our country, judges have to check legislation in the light of rules of a higher order, such as international treaties. In that way, the courts also check the legitimacy of legislative measures Here, too, we see prime examples of checks and balances in the work of the judge.

4.2. The task of the judge in forming the law

I would now like to focus my attention on the task of the judge in developing the law, and the relation this process establishes between the judge and the legislative power. We repeatedly see judges passing decisions in individual disputes. The rule of law, however, demands that they do so in a consistent and regular manner. Such an approach clearly favours legal certainty. By applying consistency in solving individual disputes, the judge does even more; assuming that in comparable future cases he will arrive at the same

judgement, he is in fact inherently development the law. Future practice can then be based on his judgements, and as a consequence, many new future trials can be avoided. If statutes can only be interpreted in one single manner, the creative element that the judge can add to the law is extremely limited. Practice however, at least in the countries of Europe, is that the development of the law by the judge goes far further. It is for example a fact of life that not every circumstance can be foreseen and regulated by the legislator. In his Discours préliminaire, his introduction to the French Civil Code in 1804, the French lawyer Portalis spoke of "mille questions inattendues". A thousand unexpected questions that arise as soon as a new law is introduced. If a dispute about any one of those questions is brought before him, the judge has no choice but to elaborate an answer. In the 20th and 21st century, in Europe, we have seen a development according to which the courts have gradually and more expplicitly taken on the task of forming the law. This has a number of causes. Many countries, including the Netherlands, have developed into social welfare states under the rule of law, in which government wishes to regulate through legislation more than in the past.

These new laws call for explanation and interpretation by the courts, in a society that has become increasingly complex and the ever expanding legislation becomes more complicated. As a consequence, in many cases, it is unclear how the law should be interpreted or applied. Furthermore, it frequently occurs that statutory regulations are deliberately formulated in broad terms, with a view to offering the courts greater freedom of interpretation, in specific cases. The use of the concept of reasonableness

and fairness in Dutch civil law is an excellent example. Because legislation has increasingly been used to regulate society, it has become more logical, in explaining an older law, to take account of current social conditions. In other words, a dynamic approach to interpretation. This in turn has led to a growth in the law-forming activities of the courts, as opposed to static, historical interpretation. Furthermore, in the Netherlands, the courts also accept rules not laid down in statute, in other words unwritten rules which in specific cases can even justify a deviation from a statutory rule. Also of key importance are international treaties in which fundamental rights are laid down, for example in Europe in particular, the European Convention on Human Rights. In the Convention itself, these rights are described summarily, leaving considerable space for interpretation. These rights too must be explained according to a dynamic approach. Because the Convention is of a higher order than national legislation, the courts in the Netherlands are regularly forced, in specific individual cases, to judge whether the national law can in fact be applied. As a consequence, for the courts, the national statutes have become less sacrosanct than was the case prior to the introduction of the Convention. In more general terms, certainly in Europe, judges have gradually become freer in respect of the actual wording of the statutes.

As a result of these various causes, the development of the law has often become a coproduction between judges and legislators, who as a consequence are sometimes referred to as ‘partners in the business of law’. It is occasionally argued that the legislative still occupies the leading

position, but in my judgement it cannot be argued that either of the powers in the state is in fact more powerful or more important. Instead, their interaction is a two-way street, with neither in general having the last word. It is for example entirely possible that the court interprets the law in a manner considered incorrect by the legislative. At that point, the legislative can revise the statute for the future. That is after all the right of the legislative. And there is nothing wrong with that situation, as long as the statute does not find itself in contravention of rules of a higher order such as treaties. On the other hand, the courts can subsequently assess these new statutes according to their content. This then is an example of dialogue between the powers of state, whereby neither of the two has the last word.

4.3 Independence and impartiality

The smooth functioning of the rule of law stands or falls with confidence in the courts. That confidence may be based on the absence of a political programme on the part of the courts. As a result a judge can offer a clear counterbalance to the other powers of state, that clearly do act on political grounds. Equally, confidence in a country's judges can be based on their craftsmanship and professionalism. And last but not least, essential for confidence in the judges is that they be independent and impartial.

Independent means that judges shall not allow their decisions to depend on the opinions of the other powers of state. Otherwise there are of course no effective checks and balances. In other words, the other powers of state may

not be either formally or informally permitted to intervene in a specific dispute before the courts. This is inherent in the independent position of the judge. It is not merely a question of sound formal rules on independence. Of equal importance is legal practice; the way things are done in reality. Some countries with excellent constitutional rules to ensure the independence of the judiciary still allow practices according to which judges are called by a Minister or a ministerial official whose aim is to influence the outcome of a particular court case. In other words, the infamous 'telephone justice'. It is above all a question of mentality; the awareness that this may not and must not be allowed. Neither a Minister nor a ministerial official should even attempt to exercise such influence, and any judge approached in this way should immediately make it clear that an attempt to influence his or her decision is utterly unacceptable. The culture should be one in which Ministers and officials would not even dare to make such an attempt, and that they would be at risk of losing all public confidence if it were to emerge that such practices took place. Actions of this kind undermine confidence in the state as a whole. It is not simply a question of confidence in a particular judge or in the judicial power as a whole but also confidence in the institutions of government as a whole. And that in turn affects the core of the rule of law.

Judges must not only be independent from other powers in the state but also impartial; they must be able to base their decisions exclusively on the law. The courts as a state power must not base their decisions on the personal, financial or other interests of a particular judge or his personal

considerations. A judge who has a personal interest in the outcome of a particular lawsuit can for that reason not arrive at a decision in that lawsuit, in an acceptable manner. That too would utterly undermine confidence in the administration of justice and hence in the rule of law. A judge who accepts favours in order to influence his decision in a particular case is doing the worst thing a judge could possibly do. As a consequence, he becomes utterly partial, and accepts a reward in return for allowing his judgement to be guided by something other than the law. Through such an action, he launches a frontal attack against all the interests which he should be faithfully serving, in a democratic state under the rule of law.

The law therefore must contain rules that guarantee the impartiality and integrity of judges. Internationally accepted principles have been laid down in the Bangalore Principles of Judicial Conduct established in 2002. These principles were welcomed by the General Assembly of the United Nations. On the other hand, impartiality is above all a question of mentality; also of collective mentality. It is of paramount importance that the judicial organisation be permeated on a daily basis by the importance of impartiality, and indeed practises that conviction. That judges who are hesitant about whether or not they should accept a case will discuss the question with their colleagues, and withdraw from the case if the causes for the hesitation cannot be removed. It is also important that colleagues on the court address one another, if they have doubts as to whether their colleague should deal with a particular case.

5. Fundamental rights

The rule of law also covers the protection of fundamental human rights. Indeed, those rights form the backbone for our civilised society. They are so fundamental that they apply also and specifically to minorities and as such may not be violated by a political majority. For that reason alone, compliance with these fundamental rights cannot be left to the legislative or executive power; in respect of these rights, there is a clear and specific task for the judiciary. For example, the accused in a criminal case must be given a fair trial, even if the political majority and the government would prefer to see otherwise. The common thread for the courts in respect of fundamental human rights is the recognition of every person as a human being and of the human value of that person; also if they belong to a minority. Very important is tolerance towards others who operate outside a country's mainstream. These may be foreigners, religious minorities or sexual minorities. Several human rights are laid down in the European Convention on Human Rights. On the basis of this Convention, a state may even be obliged under certain circumstances to actively protect the position of such minorities.[2]

During one of the meetings which I had here in the preceding week, I was asked questions about the death penalty. The importance which is given in Europe to the value of every single person as a human being, is reflected in the case law of the European Court of Human Rights about this penalty. The

[2] See e.g. European Court of Human Rights 12 May 2015, Identoba and others vs. Georgia, nr. 73235/12, regarding sexual minorities.

European Court decided in 2010 that the death penalty involves a deliberate and premeditated destruction of a human life, and is considered to be inhuman treatment and therefore contrary to the European Convention.[3]

For practical purposes, this not only affects countries in Europe. The European Court of Human Rights does not accept that a Contracting State shall extradite a person to a third country, if there is a serious risk that he will be facing death row in that country. For this reason, in a judgment of 1989, the Court did not accept that a suspect murderer was extradited by the UK to the United States, as there was a serious risk that he would be facing death row there. This judgment had practical effect. Consequently, the U.K. government obtained assurances from the U.S. regarding the death penalty before extraditing the individual in question to Virginia.

I would like to add that it is not my intention to suggest that the European rules should be applied in Indonesia. The rules that apply here are determined by the Indonesian state authorities. As I already stated in my introduction, we have not come here to tell you how things should be done. We come here for a mutual exchange of thoughts. In that context I have expressed some views on humanity and tolerance that are deeply felt by us in Europe.

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[3] European Court of Human Rights 2 March 2010, Al-Saadoon and Mufdhi vs. United Kingdom, nr. 61498/08, par. 115.

6. Functioning of the supreme court

Ladies and gentlemen, after these issues from human rights law, I would like to draw my lecture on the role of the judge to a close, by discussing further the task of a supreme court. Our hosts at the Makhamah Agung are after all supreme court judges, and we of the Supreme Court of the Netherlands occupy the same position.

Just like judges at lower courts, supreme court judges pass judgement in individual cases. They must reach a correct decision, possibly correcting errors made by lower judges. That then is a task at an individual level; at the level of a single individual dispute. It is a task which first and foremost serves the interests of the party appealing to the supreme court. In relative terms, it is a very time-consuming task. The chief justice of the US Supreme Court referred to this task as involving judges in ‘pushing paper’ for a large part of their time.

At the same time, however, a supreme court judge has a task that goes beyond the interests of the parties in a specific case. A task in the more general interests of legal and social practice. That task is the clarification and development of the law, and is something I discussed in some detail, earlier in my lecture. This task relates to the fact that the supreme courts are there to ensure the uniformity of the law, so that the law is interpreted in the same way throughout the country. If the system works effectively, the

supreme court serves as a beacon for practice. In the same way as a beacon at sea works, a beacon of the law must fulfil two requirements. It must be visible. And it must show the way.

The visibility of the course of the supreme courts requires that their decisions are published, preferably in the most accessible manner. In that way, judges of lower courts can refer to supreme court judgements and parties in lawsuits and the attorneys can better assess their chances of success if they ask themselves whether it makes sense to launch an appeal before the supreme court. This beacon function therefore helps to prevent useless appeals, thereby reducing the workload of the supreme courts. Ensuring the visibility of the course followed by the supreme court also requires the judges to express the legal opinion on the basis of which they pass their judgements and preferably also why they interpret the law in that particular way. In other words, a clear argumentation and motivation for their legal judgements requires particular attention. As concerns the foreseeability of case law, practice is not well served if the highest courts are required to reach too many decisions. Searching through mountains of court decisions then becomes like searching for a needle in a haystack. An additional measure for the supreme courts when publishing their decisions could be that they themselves make a distinction between decisions that require particular attention in respect of the development of the law, and decisions which in legal terms represent little or nothing new. An annual report can serve as a useful additional medium for announcing to the public the most important decisions of the court, in a tidy and ordered manner.

The fact that a beacon shows the way means that it is a pointer to a fixed course. In that sense, the course it sets must be constant. Just like for a ship, a judicial beacon must not suddenly halfway start pointing in a different direction, or shift to another location. To continue the parallel into the administration of justice: it is of vital importance that once it has laid out a line in case law, a supreme court sticks to that line. We at the Dutch supreme court have established the practice of consistently following lines previously laid down in our case law, unless there are very urgent grounds for changing course. Such a deviation occurs extremely rarely, perhaps a few times a year, as compared to the many thousands of decisions taken. This too is another means of restricting the number of proceedings brought before the supreme court; both appealing parties and their attorneys know that it makes little sense to try again, once the Supreme Court has set a clear course.

To enable supreme court judges to stick to a fixed course, it is also of key importance that the judges be conversant with one another's decisions. We at the Supreme Court of the Netherlands have therefore established the practice that decisions that are not entirely self-evident are discussed with the full chamber of 10 judges, even if the decision itself is taken by a panel of 3 or 5 judges. The other judges in the chamber can contribute to the discussion, since it is assumed that they will follow the decision if they are required to decide on a similar question, in the future. We therefore encourage substantive discussion between us, and as far as possible attempt

to arrive at a decision with which none of the members of the chamber is truly unhappy.

I referred above to the importance of accounting for and explaining the legal grounds underlying the decisions made by a supreme court. The formulation of the supreme court's decisions can generate additional clarity for practice, and that too can help to limit the number of legal proceedings instituted. On a regular basis, the Dutch Supreme Court does this at the start of the explanation of its decisions by referring to the legal framework and the legal opinion on the basis of which the decision was reached. On occasion this is only the framework needed for arriving at a decision in this individual case. However, there are also situations in which the Supreme Court broadens the grounds of argumentation for its decision. In such cases, the court will outline a legal framework that can also be valuable in reaching decisions on other disputes facing similar problems. On some occasions, the Dutch Supreme Court even explains how it views a particular legal doctrine, and provides a full account of its views on all aspects of that doctrine. This practice above all occurs within our criminal chamber criminal law after all deals with a number of regularly recurring themes. On occasion, the criminal chamber comes together to discuss which legal issues could be in need of such a panoramic ruling; these consultations enable us to draw up for ourselves a legal agenda for the coming period. Rulings of this kind are also useful for the lower courts. In that connection, we strive to maintain sound, open and equal contacts with the lower courts. We are keen to hear from them which legal issues regularly give rise to discussion and problems, so

that we can consider whether we can offer a possible solution, in the form of a ruling in general terms. In this way, large numbers of new proceedings before the lower courts can be avoided, or settled more easily. We are also keen to hear from the lower courts whether our judgements are sufficiently clear for them, and are practicable. We are happy to take account of well-founded criticism, since it helps to improve the quality of our decisions. We maintain contacts with the lower courts in different ways. Judges from lower courts are for example welcome to spend a month working at our supreme court as a sort of internship, during which time they join us in a particular chamber, and follow all the cases dealt with in that chamber during the course of the month.

It goes without saying that issuing an extensive explanation of reasons that set a clear course in important cases, takes time. Nonetheless, we view this as one of our most important tasks. We spend proportionally less time on cases that are not relevant for the development of the law, and which require nothing more than a decision in one case. This is a deliberate strategy and priority of the Supreme Court. Indeed this approach ties in with the limitations of the process of cassation: questions of fact which by their nature are unique to the case under consideration are not reviewed at all by our court. We do however have a certain degree of freedom in deciding for itself what it considers factual and hence what lies beyond its scope of work. Within the criminal chamber of the Supreme Court, for example, a fixed line in our country is that determination of the punishment is a factual issue. Complaints about the severity of the sentence only rarely result in cassation;

this practice is well-known and as a consequence, complaints of this kind are uncommon at our court.

We employ a series of measures to create space for ourselves to concentrate above all on the process of forming the law. This does often require a legislative measure. For example, since the introduction of a legislative change in 1988, we are permitted to take decisions that represent little legal innovation in a three-judge panel. Furthermore, cases in which an appeal does not result in cassation can be dealt with without a substantive explanation of grounds, on the condition that the decision is not relevant for the legal uniformity or the development of the law. In cases which clearly have no chance of success or cases in which the party filing an appeal has no serious interest in that appeal, since 2012, we have even been authorised to take our decision without giving substantive grounds following simplified proceedings, which can often be concluded within just a few months. This saves us a great deal of time, and means that parties have less interest in continuing litigation with the sole purpose of delay. This approach also simplifies the study of the case law of the Supreme Court. Anyone wishing to study this case law can immediately identify rulings without a substantive explanation of grounds as legally unimportant decisions, which he can skip in his investigation.

Quite aside from such legal means of encouraging more efficient working practice, it is also a question of mentality that judges at a supreme court make every effort to focus their scarce and costly time and energy on legal issues that are relevant for the largest number of people, and in which the added value of a decision by the supreme court is therefore greatest. Ideally, a

supreme court judge will spend 80 % of his or her time on the most important 20 % of cases. This 80-20 ratio already identified by Pareto is indeed a principle that not only applies to judges.

7. Conclusion

Ladies and gentlemen, with this reference to the Pareto principle, I have arrived at the end of what I wanted to say to you about the role of the judge, and in particular the supreme court judge in a democratic society based on the rule of law. This is a subject that brings together our countries and courts, yet which can take on its own substance and its own colour, in every country and every culture. It is indeed a multifaceted subject. On the one hand it relates to the fundamental questions of state and political structure, and checks and balances between the different powers in the state. At the same time, it has numerous practical aspects; how does a judge divide up his time, how can a supreme court judge best direct legal practice, what influence does the explanation of the grounds for a judge's decision have on legal practice, and to what extent can the method of publishing the court's decision make a contribution to the development of the law?

All of these are subjects which I assume interest an audience like yours, and I can well imagine that you have questions on some of these issues that you would perhaps like to ask me. Should that be the case, please do not hesitate to use this opportunity to pose your questions. The floor is yours.