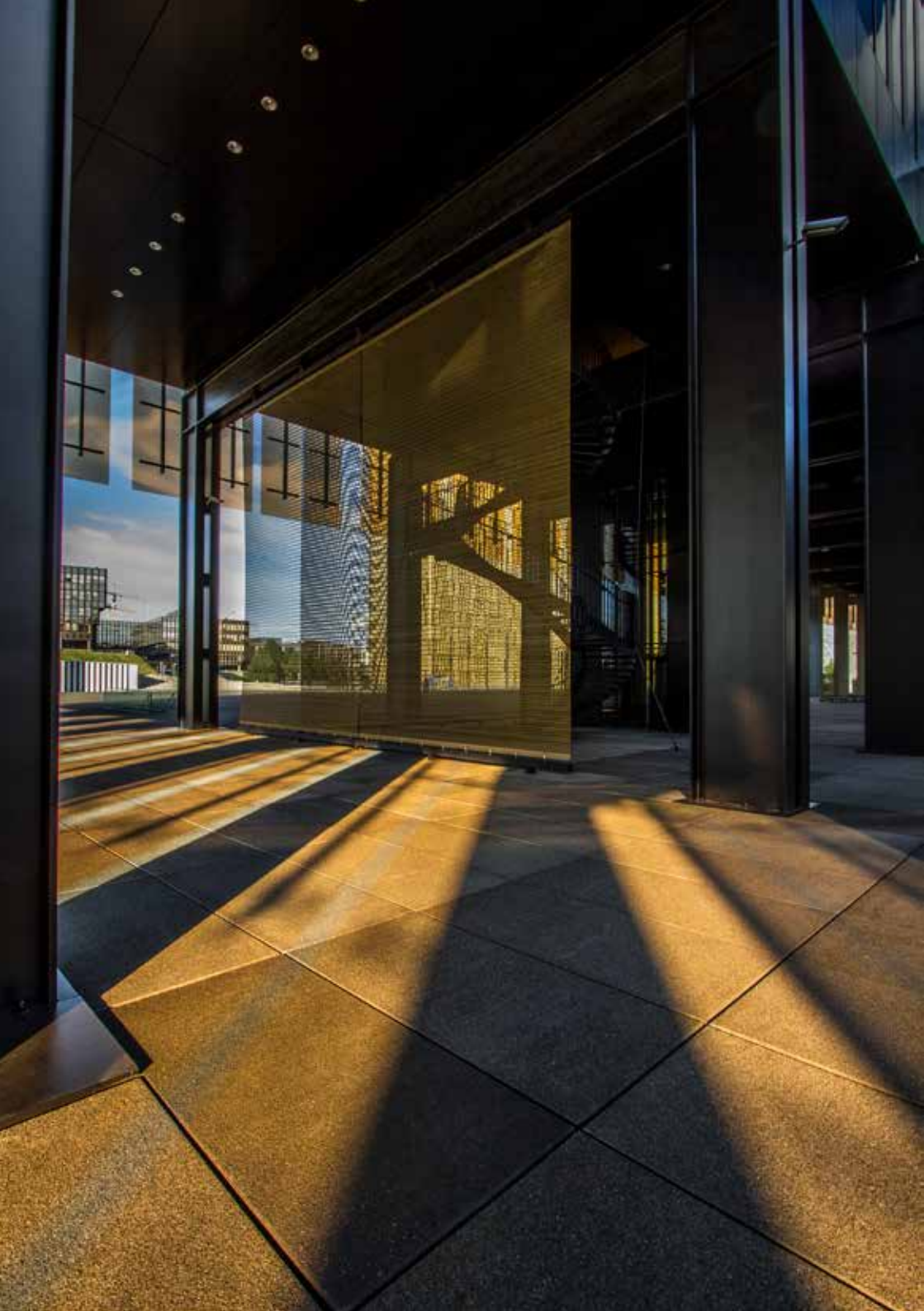
COUR DE JUSTICE
DE L'UNION EUROPÉENNE

# AUDIENCE SOLENNELLE
## DU 7 OCTOBRE 2019



# AUDIENCE SOLENNELLE
# DE LA COUR DE JUSTICE
# DU 7 OCTOBRE 2019

à l'occasion de la cessation des fonctions
de M. le Juge Rosas et M. le Juge Fernlund
et de l'entrée en fonctions de MM. Niilo Jääskinen et Nils Wahl
en qualité de juges à la Cour de justice

## DÉROULEMENT DE LA CÉRÉMONIE

Ouverture par M. Koen Lenaerts, président de la Cour

Allocution en hommage à M. Allan Rosas et M. Carl Gustav Fernlund
par M. le président Lenaerts

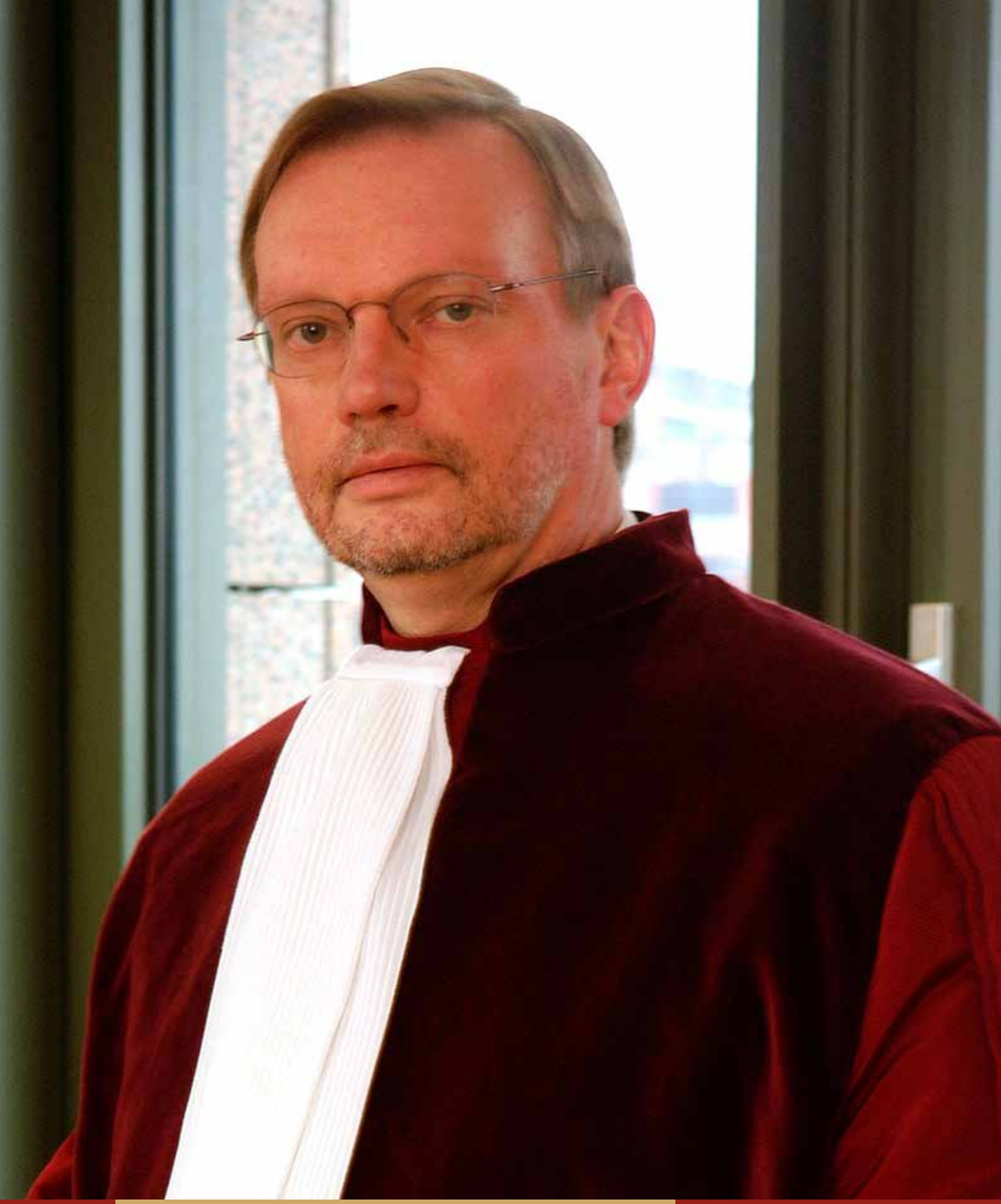
Allocution de bienvenue à M. Niilo Jääskinen
par M. le président Lenaerts

Prestation de serment de M. Niilo Jääskinen

Allocution de bienvenue à M. Nils Wahl,
par M. le président Lenaerts

Prestation de serment de M. Nils Wahl

# MESSAGE DE DÉPART



## ALLAN ROSAS

**JUGE À LA COUR DE JUSTICE**

Une aventure arrive à son terme. Seul l'avenir nous dira quelles aventures nous attendent.

La vie est une aventure, mais la vie de juge à la Cour a été une période particulièrement gratifiante et passionnante.

Ma gratitude profonde pour ces 17 années et 8 mois s'adresse aux collègues, Membres de la Cour, aux fonctionnaires de l'administration et, bien évidemment, aux membres de mon formidable cabinet. Les relations professionnelles aussi bien que sociales (y compris la participation à des concerts de rock !) ont (presque) toujours été aimables, voire amicales. Mes pensées vont également à plusieurs collègues du Tribunal, avec lesquels j'ai partagé des moments amicaux à l'occasion d'une coopération fructueuse autour de dossiers d'intérêt commun.

Tuula a constitué le socle infaillible qui m'a toujours aidé à rester sur le bon chemin.

Trois aspects du travail judiciaire resteront particulièrement gravés dans ma mémoire : la procédure orale (je suis un ami des audiences !), les débats (parfois intenses, mais dans le bon sens du terme) lors des délibérés et les discussions (toujours agréables, mais également enrichissantes) au sein du cabinet.

Toutes ces phases du travail judiciaire ont connu d'importants changements de contexte tant matériel qu'institutionnel et procédural (je suis partisan des changements de société, mais comme Tuula peut en témoigner, les déteste s'ils affectent la vie quotidienne . . .).

*Primo*, la portée et la nature du droit applicable : à cet égard, nous avons eu à connaître un développement d'ampleur, à la suite des traités de Maastricht, d'Amsterdam, de Nice et de Lisbonne. À mon arrivée au mois de janvier 2002, j'étais loin d'imaginer que des questions telles que les discriminations fondées sur la religion, le handicap, l'âge ou l'orientation sexuelle, les demandeurs d'asile, les personnes accusées, les mesures restrictives (sanctions) prises contre les États tiers et des individus, la stabilité du système économique et monétaire, les attaques contre l'État de droit, le Brexit, etc. pourraient un jour être au cœur de nos préoccupations dans notre travail quotidien . . .

*Secundo*, les changements affectant notre institution : l'augmentation du nombre des juges de 15 à 28 a été un changement particulièrement visible et concret, qui a rendu possible, entre autres, une augmentation importante des chambres à 5 et 3 juges. Autant je me suis réjoui de l'arrivée de tous les nouveaux collègues en 2004, 2007 et 2013, autant, si la folie dénommée Brexit se matérialise, je déplorerais profondément le départ

de nos excellents collègues britanniques. Les changements affectant le Tribunal (la création, puis l'abolition du Tribunal de la fonction publique, l'augmentation radicale du nombre des juges) méritent également d'être mentionnés ici.

*Tertio*, les changements d'ordre procédural : les procédures et le déroulement des audiences, en partie grâce à la refonte du règlement de procédure en 2012, se sont développés dans le bon sens. Cette réforme a été précédée de l'instauration de la procédure préjudicielle d'urgence (PPU), qui est également un succès. Quant au nouveau système de filtrage des pourvois dans certains domaines, il représente un pas en avant qui devrait être suivi de mesures plus importantes (j'y reviendrai ci-après).

Tout en étant ravi d'avoir pu contribuer à ces développements, je suis avant tout fier d'avoir été membre d'une Cour qui – soyons francs – est devenue l'institution judiciaire la plus importante du monde.

Sera-t-elle en mesure de faire face aux défis et aventures de l'avenir ? S'il est question du sens des responsabilités, du dévouement, de l'efficacité et de la connaissance de la matière – bref, de la vertu – des Membres (parmi lesquels mon successeur), de leurs collaborateurs ainsi que des fonctionnaires de l'institution, nul ne doit éprouver des doutes.

Le grand défi, qui concerne très certainement presque toutes les juridictions du monde, est de parvenir à combiner et à trouver le juste équilibre entre les exigences d'efficacité et célérité, d'une part, et la qualité des jugements, d'autre part. L'augmentation permanente du nombre d'affaires exige des réformes profondes, ayant pour objectif ultime une évolution vers une Cour véritablement constitutionnelle.

Les Membres de la Cour sont pleinement conscients de ce défi et parfaitement à même d'envisager et de mettre en œuvre les mesures nécessaires. Permettez-moi néanmoins de formuler quelques observations personnelles, en vue des réformes envisageables à court terme.

Eu égard au nombre impressionnant des juges au sein du Tribunal, un transfert plus important de compétences additionnelles au Tribunal est possible et souhaitable. Pourquoi ne pas instaurer des chambres d'appel ou de pourvoi au sein même du Tribunal et, en conséquence, soumettre tous les pourvois introduits devant la Cour à une autorisation ?

La Cour pourrait également revenir à sa proposition d'un transfert partiel au Tribunal de la compétence pour statuer sur les recours en manquement, tout en réfléchissant encore aux exceptions à prévoir et

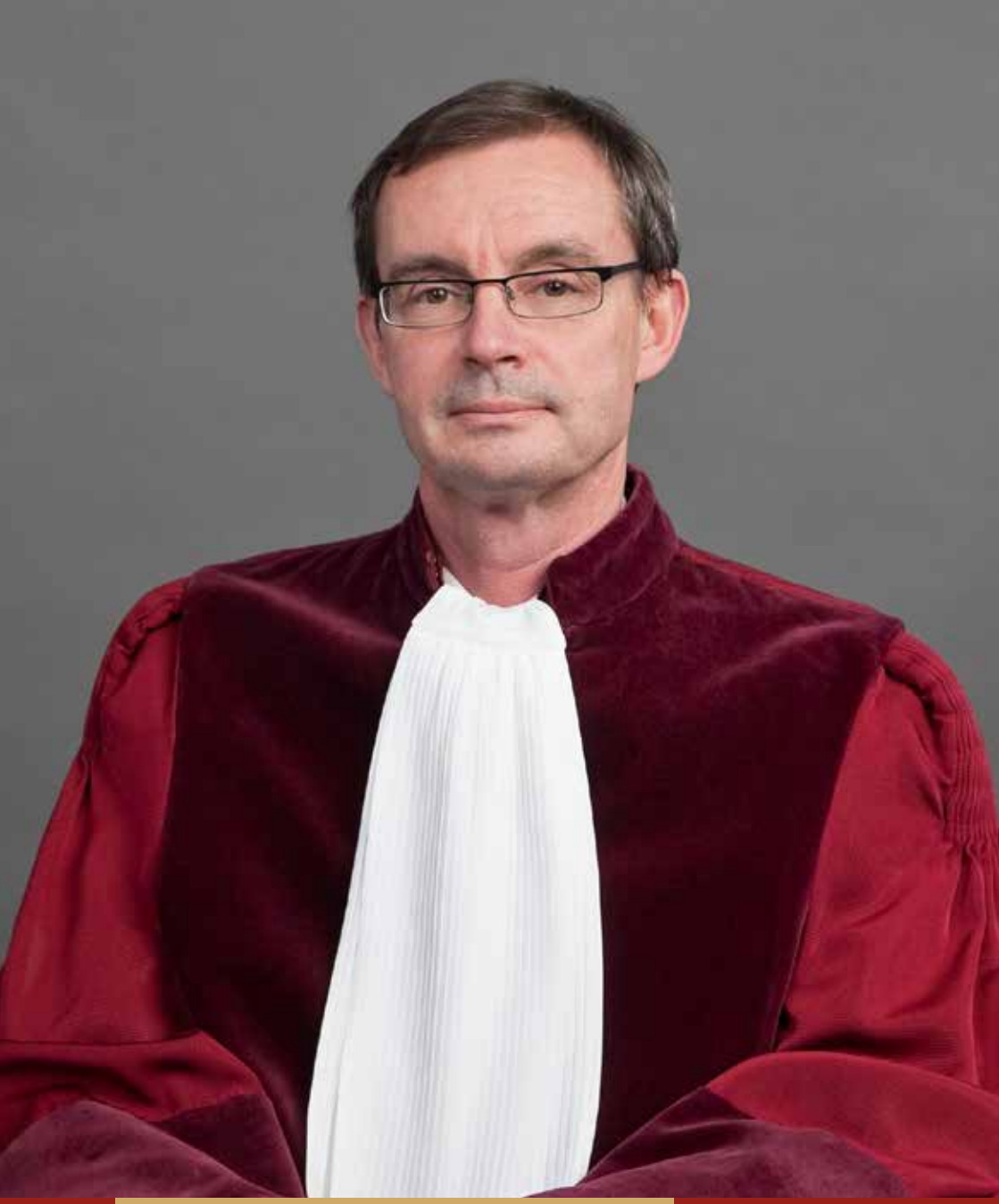
en déterminant les catégories d'affaires qui continueront à relever de sa compétence.

Quant à la procédure préjudicielle, ne faudrait-il pas souligner plus encore la distinction entre l'application et l'interprétation du droit, la première fonction appartenant aux juges nationaux en tant que juges de l'Union ? L'arrêt CILFIT est-il « gravé sur le marbre ou sur l'airain » ?[1] Je ne le crois pas.

Par ailleurs, comme l'ont montré les discussions lors du colloque organisé à l'occasion du 30e anniversaire de l'installation du Tribunal de l'Union européenne, le 25 septembre 2019, il convient de réfléchir aux possibilités d'utiliser l'intelligence artificielle au sein de la Cour et du Tribunal.

Enfin, n'y aurait-il pas lieu d'envisager des réformes plus radicales ? Probablement. Mais vous estimerez sans doute que « tout cela forme un nouvel objet trop vaste pour ma courte vue » et que « j'aurais dû la fixer toujours plus près de moi ».[2]

1 | Je dois cette expression à Jean-Jacques Rousseau, Du contrat social, Livre II, chapitre XII.
2 | Ibid., Livre IV, chapitre IX.



# CARL GUSTAV FERNLUND

## JUGE À LA COUR DE JUSTICE

One Wednesday in May 2011, I received a telephone call from the State Secretary of the Ministry of Foreign Affairs, who asked if I wanted to succeed Ms. Pernilla Lindh as the Swedish judge at the European Court of Justice. He wondered if I could give an answer by Friday that week. The offer came as a complete surprise to me. I knew that the position had been advertised, but I had not applied for it, since I was planning to continue as President of the Administrative Court of Appeal in Gothenburg. Hence, I asked to have time for reflection until Monday. After discussions with my wife and the rest of the family, I accepted the offer. Actually, I didn't have any difficulty getting my wife's acceptance to move to Luxembourg. She was dissatisfied with her job at that time and has later told me, "Had you refused, I would never have forgiven you". When I accepted, I was happily unaware of the existence of the Article 255 Committee. It came as a rather unpleasant surprise. Had I known then what I now know about this committee, I would probably not have dared to accept the nomination. However, as you can tell, the Committee did not have any objections to my candidacy.

Neither my wife nor I have had reason to regret the choice made. I have been at the Court and in Luxemburg for eight years now, years that have been both challenging and exciting in many ways.

The Court is in many regards a unique institution with special, specific duties as the Union's own court. In my opinion, it is also a well-functioning institution that can handle the tasks assigned to it in an efficient way. It has been a real privilege to have had the opportunity to work at the Court. The importance of this institution can hardly be overestimated and, in particular, the Court has come to play an increasingly important role in the Union's functioning and the protection of fundamental rights, not least in the defense of the rule of law.

I would like to take this opportunity to make some reflections concerning the way the Court works, in light of my previous judicial experience.

In general, it has not been difficult for me to adapt to the way the Court works. With a background as a judge in an administrative court, I was used to working with cases in legislative areas in which I had little or no previous experience. However, our cases here present two more important factors that can be relatively unknown to us, namely the national law and the national context that is relevant in the case. The nature of the cases also varies greatly, from very technical issues, such as the approval of chemical products, to issues of a constitutional nature. I can mention two examples of this diversity in cases where I was the reporting judge. One concerned the question whether it is permissible to have a lower value added tax (VAT) rate for "fresh" croissants with a shelf

life of less than 45 days, compared with those with a shelf life exceeding 45 days. The other concerned the interpretation of Article 50 of the EU Treaty and the possibility for the United Kingdom to withdraw its request to leave the Union. I have also had the pleasure of participating as both a judge and 'co-judge' in many discussions on important tax matters, an area of particular interest to me, as I have dealt a lot with fiscal issues earlier in my career.

The biggest challenge for me has, maybe not so surprisingly, been the language. After all, my knowledge of French was rather limited when I started at the Court. While it was relatively easy for me to read texts in French, expressing myself orally and in writing has been considerably more difficult and to some extent an obstacle to being able to do a good job in all situations. What saved me was the opportunity we have to express ourselves through notes drafted with the help of the cabinet. For my part, therefore, I would have liked to see that the judges of the Court, like our colleagues in Strasbourg, had the opportunity to work in both French and English. That would also broaden the recruitment basis for the Court.

Regarding the day-to-day work, it has been quite similar to the routines I got accustomed to in Sweden's Supreme Administrative Court, especially the work in chambers of five or three judges.

Nevertheless, there are three major differences that I would like to highlight. One is the system of preliminary reports, what we here call the "rapport préalable". The corresponding report in the Swedish court is a memorandum that a référendaire writes on its own authority and without contact with the reporting judge in the case. I think the system at the Court of Justice is clearly better from both a quality point of view and when it comes to efficiency. Another difference is the regular plenary meetings ; our weekly "réunion générale". There were no such administrative meetings with the members of the Supreme Administrative Court. The third difference lies in the work of the Grand Chamber, which has no equivalent in the Supreme Administrative Court. That court very rarely meets in plenary session (with about 16 judges), and then mainly because the court wants to depart from previous case law.

The system of preliminary reports being reviewed by the Court in plenary is, in my opinion, extremely valuable and of great importance in ensuring that the Court has a uniform case law. In a court with many judges working in a number of chambers, there is always a risk for conflicting rulings. However, I think that the Court has managed surprisingly well to avoid this. I believe that this is to a great part due to the recurring

réunion générale, as well as to the routines associated with this meeting – especially the fact that all members of the Court have access to the preliminary reports and, thus, have the opportunity to react to other colleagues' preliminary assessment of how a certain issue should be handled.

As an example, I can take the value added tax (VAT) cases, which is our largest individual case group and which I have had reason to follow more closely in recent years. All chambers and virtually all of the members of the Court have now and then to deal with this kind of cases. The Court has so far decided more than one thousand VAT cases. Our judgments in this area are examined in detail by experts from tax administrations, businesses as well as the Commission and discussed at conferences. What I have experienced when participating in such contexts is that there may be different opinions as to whether the outcome in a particular case is well-founded or not, but I have not heard any criticism that our jurisprudence would, other than in some isolated cases, deviate from past practice.

As far as the work in the Grand Chamber is concerned, I think that slightly fewer cases could be decided in this formation and that the Court should have somewhat greater confidence in chambers of five judges, ruling with the benefit of an opinion from one of the Advocate Generals. The workload of the Court has gradually increased and it should, not least for budgetary reasons, be more economical in this regard. Overall, however, I think the Court is working efficiently and with continuous efforts for improvement. A reform that I believe will be of particular importance in limiting the Court's workload is the newly introduced system of leave to appeal.

One thing that I think could be criticized though, is the format and the language of our judgments. They can hardly be said to be particularly reader-friendly. In fact, the operative part is not infrequently on the border of being incomprehensible. The habit of constantly referring to our previous case law in the judgments also contributes to making the Court's judgments heavy and difficult to read. Implementing a simple change towards referencing, in the same way as the Advocate Generals do in their Opinions, previous case law in footnotes, rather than in the body of the judgments, would already increase their readability. In Sweden, but also in other countries, work has been ongoing for several years on modernizing and simplifying, and thereby increasing the comprehensibility of the language of judgments. I think that the Court should perhaps have a more systematic reflection on how it can improve in this regard.

Being a judge at the European Court of Justice is a demanding task where 40 working hours a week is often not enough. The work also requires that you be present in the Court with little opportunity to take any longer leave outside the meeting-free weeks (vacances judiciaires / semaines blanches). That is a problem, especially for us who come from a country far from Luxembourg and with communications that are not the best. In all my previous positions, I have had greater flexibility in this regard. However, the Court's way of working makes it difficult with individual leave. This has sometimes been frustrating, as I have not been able to attend some important events. Another problem has been that summer leave falls late, when many people in Sweden end their holidays. I realize that it is not easy to change this, but improvements of the long-term planning of the chambers' work would help planning of private life in a rational way.

As a judge at the Court, you have invaluable help from the Court administration, which in many ways facilitates the work of a judge. Compared to my previous position in the highest administrative court in Sweden, I have gotten spoiled working here. After all, it is important that a judge is allowed to devote her or his time to the judicial activities without having to spend time on various administrative tasks, which I, as a judge in Sweden, had to do. I am very grateful for this administrative support.

My wife and I have been happy with our lives here. Luxembourg is a small and very well organized country where, as a foreigner, it is easy to find a place in daily life. We have been fortunate to have nice neighbors and have been able to participate in various local activities. The countryside nature is very beautiful, fascinating, and rich in a cultural heritage that stretches back to Roman times. The geology of the country is also interesting, as appreciated by my wife, who is a geologist. We have had great pleasure in making excursions and walks in different parts of the Grand Duchy.

We have also had the pleasure of participating in many interesting and educational official visits by the Court to other countries, as well as wonderfully enjoyable excursions organized on a more individual basis by colleagues. We really appreciated this. In this connection, I would also like to extend a special thank you to Mrs Kris Lenaerts for the commitment she shows in making life more enjoyable for spouses. It is important that not only the judges but also the companions feel welcome. After all, family is very important.

I am now leaving the Court after eight years of service. It is the longest period during which I have held the same position, throughout my

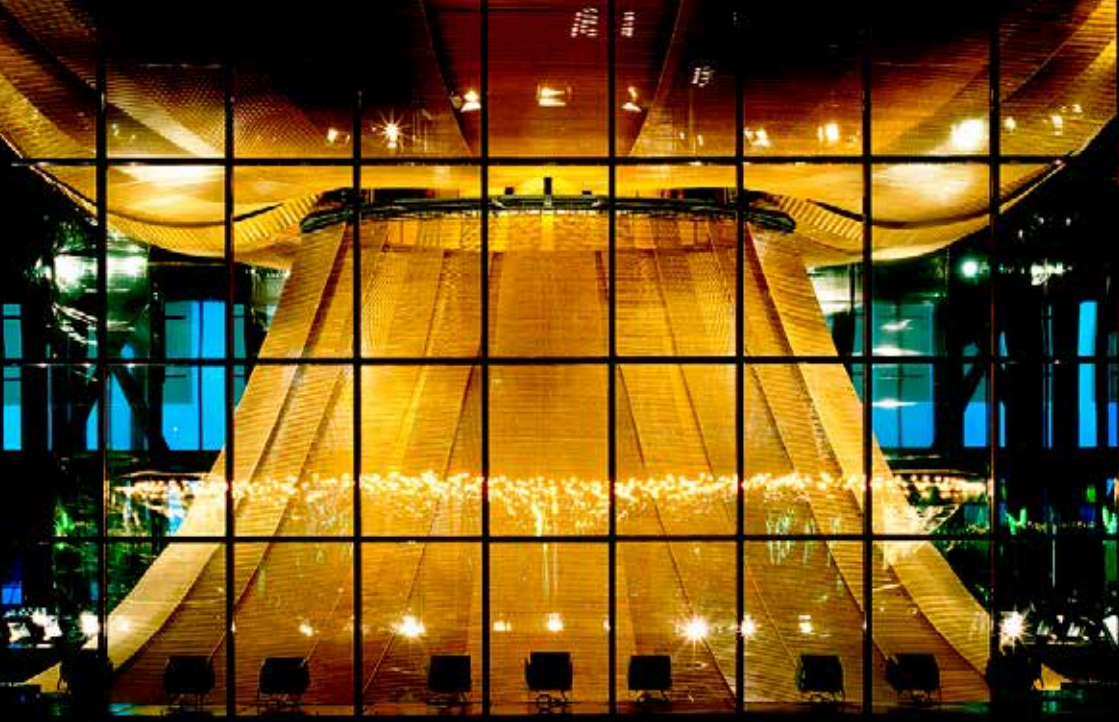
professional career. It was not an easy decision to leave the Court this year. It was mainly for personal and family reasons that I came to this conclusion. Once the decision was made, I started to look forward to being able to devote myself to other activities and now feel satisfied to conclude my work at the Court.

In the various chambers of which I have been part, I have had the privilege of working with colleagues with an impressive knowledge of different areas of law. The work has been characterized by collaboration, collegiality and friendliness. A big thank you to all of you. It has been a true privilege to get to know and collaborate with you.

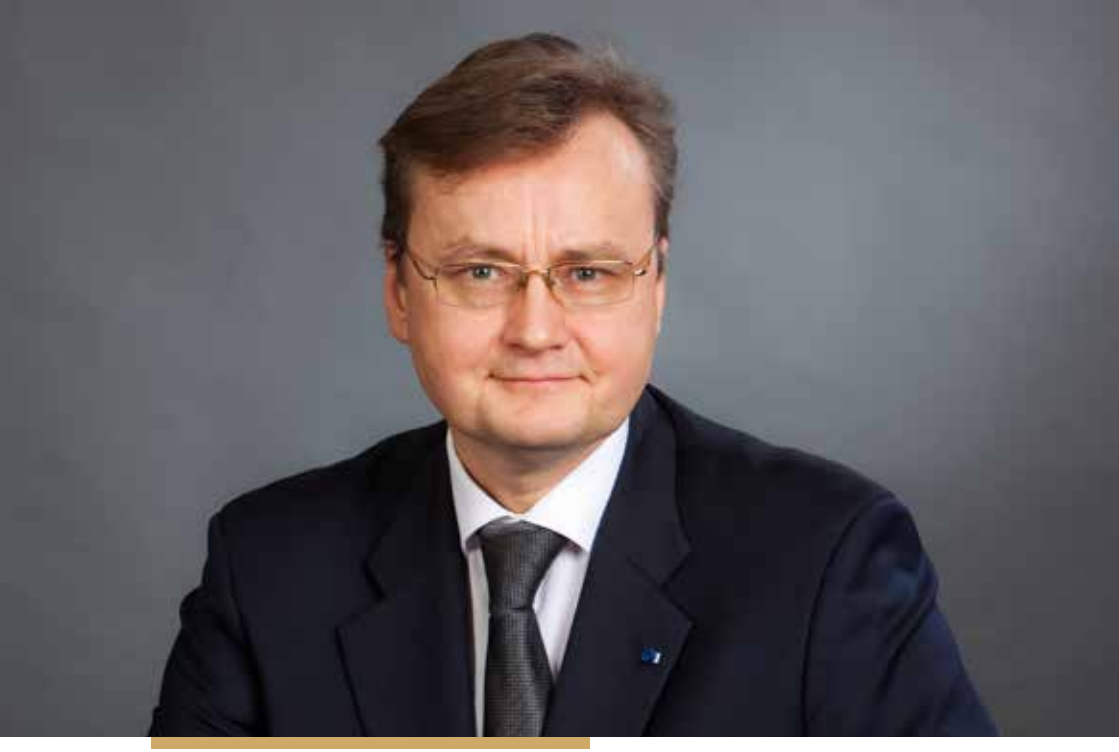
I would also like to extend a special thank you to the Swedish interpreters and the Swedish translation unit, who do an excellent job. My cabinet and I have had constant contact with the translation unit in order to ensure that to the French original texts are translated into Swedish as faithfully as possible , which is not always easy given the differences in structure and expressions between French and Swedish.

A big thank you, of course, also to my collaborators in the Swedish cabinet. A cabinet that has been very stable. A couple of them started already under the first Swedish judge at the Court, the late Mr. Hans Ragnemalm. I find it sad that the cabinet has now, unfortunately, been dissolved and the continuity been broken. I wish them good luck on the new posts, within and outside the Court, that they will now take up.

It is, of course, with regret that I am leaving my task at the Court and the people I have worked with. But for me, now was the time to take this step and I have no fear of not being able to find other meaningful activities, but look with confidence forward to a more “free” life. My warmest thanks to all of you whom I have had the pleasure and privilege to get to know and work with.



# JUGES ENTRANT EN FONCTIONS

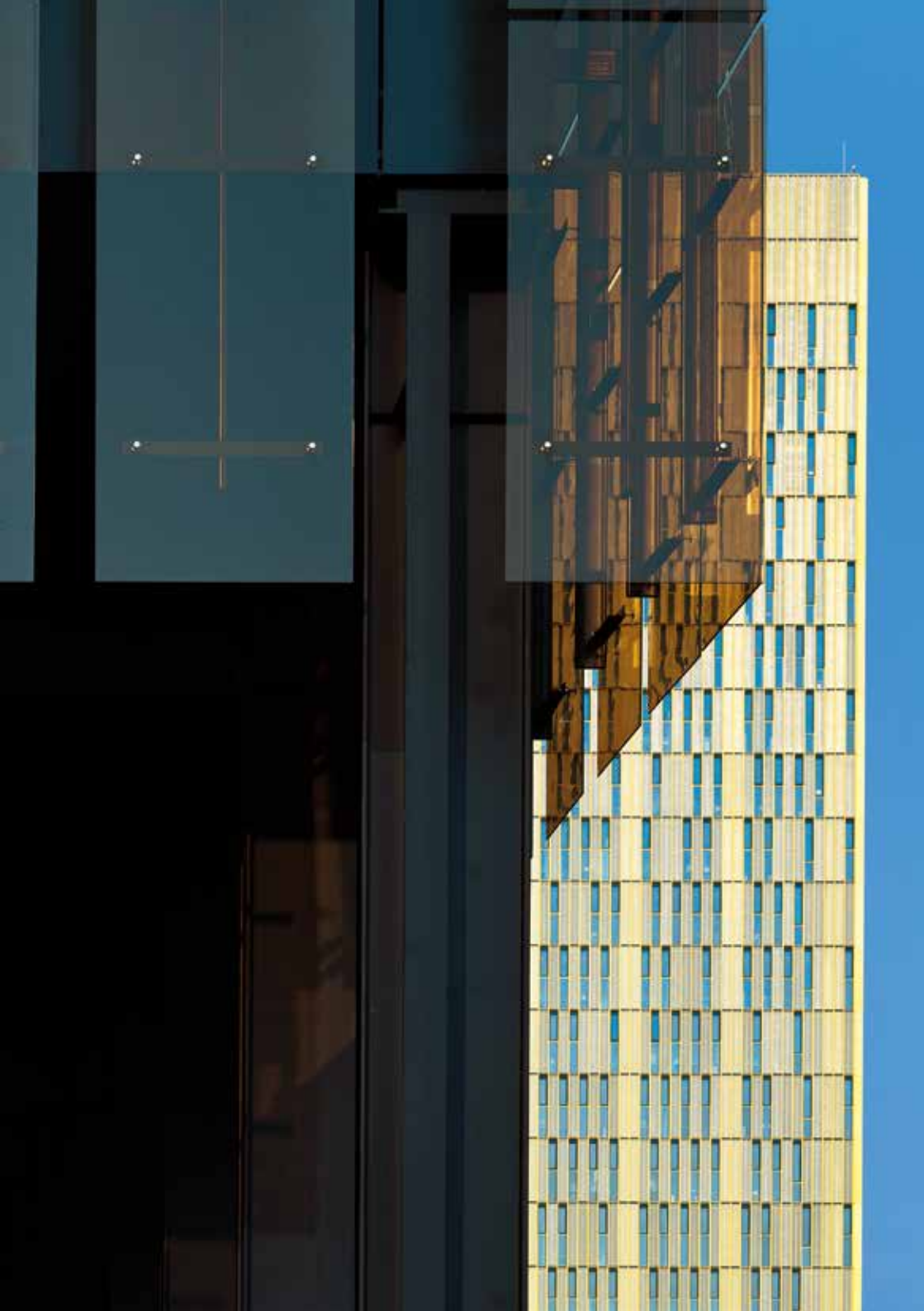


## NIILO JÄÄSKINEN

né en 1958 ; licence en droit (1980), diplôme d'études approfondies en droit (1982) et doctorat de l'université de Helsinki, Finlande (2008) ; chargé de cours à l'université de Helsinki (1980-1986) ; référendaire et juge temporaire au tribunal de première instance de Rovaniemi, Finlande (1983-1984) ; conseiller juridique (1987-1989), puis chef de la section de droit européen (1990-1995) au ministère de la Justice, Finlande ; conseiller juridique au ministère des Affaires étrangères, Finlande (1989-1990) ; conseiller et secrétaire pour les affaires européennes à la Grande commission du Parlement finlandais (1995-2000) ; juge temporaire (juillet 2000-décembre 2002), puis juge (janvier 2003-septembre 2009) à la Cour administrative suprême, Finlande ; responsable des questions juridiques et institutionnelles lors des négociations pour l'adhésion de la République de Finlande à l'Union européenne ; avocat général à la Cour de justice du 7 octobre 2009 au 7 octobre 2015 ; juge à la Cour administrative suprême (2015-2019) ; vice-président de la Cour administrative suprême (2018-2019) ; juge à la Cour de justice depuis le 7 octobre 2019.

## NILS WAHL

né en 1961 ; docteur en droit de l'université de Stockholm, Suède (1995) ; professeur associé (*docent*) et titulaire de la chaire Jean Monnet en droit européen (1995) ; professeur en droit européen, université de Stockholm (2001) ; directeur général d'une fondation œuvrant dans le domaine de la formation (1993-2004) ; président de l'association suédoise Nätverket för europarättslig forskning (Réseau pour la recherche en droit communautaire) (2001-2006) ; membre du Rådet för konkurrensfrågor (Conseil du droit de la concurrence, Suède) (2001-2006) ; juge au Tribunal (2006-2012) ; avocat général à la Cour de justice du 28 novembre 2012 au 6 février 2019 ; juge à la Cour de justice depuis le 7 octobre 2019.



COUR DE JUSTICE
DE L'UNION EUROPÉENNE

RUE DU FORT NIEDERGRÜNEWALD
L-2925 LUXEMBOURG

Octobre 2019

*Imprimé sur papier écologique*