Mr President of the Republic,
Ms Speaker of the Parliament,
Mr President of the Supreme Administrative Court,
Esteemed judicial colleagues,
Ladies and gentlemen,

I am delighted to have the opportunity to address you as we mark the 100th anniversary of the Supreme Administrative Court of Finland. That court’s establishment on the 22nd of July 1918 was a key moment in the foundation of the Finnish legal order and it is a pleasure for me to celebrate this anniversary with you here today.

Anniversaries are moments that bring people together to recall an event that has played a part in all of their lives. ‘Together’ – which was chosen as the theme for last year’s centennial celebrations commemorating the independence of the Republic of Finland – reflects the idea of cooperation. That word reminds us that immense collective effort and perseverance were required to create, build, maintain and develop the modern Finnish State and there have certainly been times in the past one hundred years when the Finnish people have needed their legendary quality of Sisu – the Finnish art of inner strength – in order to succeed in their pursuit of that shared national goal.

The normative foundations for that State are set out in what is now Section 1 of the constitution act of 2000, which states that “[t]he constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society.” An essential part of modern Finland’s identity is its firm commitment

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to parliamentary democracy based on the rule of law, equality and the respect for fundamental rights, in which independent and impartial courts are entrusted with the exercise of judicial power. In the years following independence, the Republic’s judicial system was strengthened by the establishment of the Korkein oikeus (Supreme Court) and the Korkein hallinto-oikeus (Supreme Administrative Court) as the highest judicial authorities in the land, each in its own sphere of jurisdiction. Their creation was recognised as a major step towards the ‘constitutionalisation’ of the Republic. Even though significant reforms have been undertaken over the years and the political context in which they operate has inevitably evolved with the times, those courts’ constitutional status has remained virtually unchanged since 1918. Today, the Korkein hallinto-oikeus as the court of last resort in administrative matters receives around 4 000 cases annually in a wide-ranging and fast-changing field of law.

National courts such as the Korkein hallinto-oikeus are important actors not only at national level but also within the framework of the European Union. I would go as far as to say that the dialogue between national courts and tribunals and the Court of Justice at EU level, within the framework of the preliminary ruling procedure, is co-substantial to the rule of law in the EU. Pursuant to Article 19 TEU, which gives concrete expression to the value of the rule of law enshrined in Article 2 TEU, it is not only for the Court of Justice but also for national courts to guarantee that, in the interpretation and application of the EU Treaties, the law is observed. In other words, national judges may be regarded as the courts of general jurisdiction for EU law. That is the reason why the preliminary ruling procedure is considered the keystone of the EU’s legal order.\(^1\)

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In the coming minutes, I would like to explore that dialogue between the Court of Justice and national administrative courts in general, and the Korkein hallinto-oikeus in particular. At the outset, however, I should point out that there are easier tasks than to speak after my highly-esteemed former colleague at the Court of Justice, Mr. Niilo Jääskinen, who is now President of the Third Chamber here at the Supreme Administrative Court. Following his excellent and comprehensive introductory remarks, I could simply say that I agree and leave the stage now, but I suspect that was not the intention of President Vihervuori and the organisers of this seminar when they asked me

to come and speak. I will therefore try to build on Judge Jääskinen’s words by making four specific observations on that dialogue.

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First, I very much agree with Niilo Jääskinen’s remarks concerning the fundamental importance of administrative justice for the stability of democracy. Indeed, as the European Court of Human Rights stated in *Kress versus France*, administrative courts are considered to be “one of the most conspicuous achievements of a State based on the rule of law”.2

In my view, the principles of democracy and the rule of law are dependent on the establishment of administrative justice in some form,3 since a modern European legal order *must* enable its individual citizens to seek judicial review of administrative action. Historically, the establishment of independent administrative courts in Europe has followed two different models: whereas an *objective* conception in line with the French tradition of judicial review focuses on the control of the legality of administrative acts, a more *subjective* conception, deriving in particular from the German notion of *Individualrechtsschutz*, emphasises the right of the individual to call upon independent judges to provide effective judicial protection of individual rights.4

Those two approaches are based on very different rules regarding admissibility (*locus standi*) and the scope of judicial control, yet the process of Europeanisation has fostered their gradual convergence,5 at least in terms of the result achieved. Thus, despite the legitimate diversity that exists, reflecting national traditions of administrative justice, that convergence combines both objective and subjective elements in European administrative adjudication.6

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This leads me to my second observation.

The principal mechanism that has fostered this convergence is, I submit, the preliminary ruling procedure. The judicial dialogue thus established between courts follows an

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6 Ibid.
That duality stems in part from the fact that the preliminary ruling procedure does not *prima facie* distinguish between referring courts according to the scope of their jurisdiction. Indeed, the distinction between civil and administrative courts is more or less unknown to EU law and the role of the Court of Justice is to interpret that law whatever the national procedural context in which a question has arisen. As a result, the *subjective* protection of individual rights at national level combines with the more *objective* preliminary ruling mechanism where a reference is made under Article 267 TFEU. In other words, whereas the national court might have as its starting point the individual rights of the applicant, the Court of Justice pursues that same goal by focusing on the *objective* need to give full effect to the provisions of EU law in the public interest.

This combination of a subjective and an objective conception of the preliminary ruling procedure has assisted the Court of Justice in safeguarding the rule of law at EU level, its purpose being not merely the attainment of the EU’s policy objectives but also the protection of rights enjoyed by the individual European citizen. Thus, individuals are considered to be subjects of the laws through which European integration is realised, and national courts – particularly national administrative courts – are called upon to protect individual rights, with the assistance, where necessary, of the Court of Justice.

In order to uphold the respect for the rule of law and to encourage individuals to stand up for their rights, when required, before national courts and tribunals, the cooperation between the Court of Justice and those courts on the basis of the preliminary ruling mechanism is thus of utmost importance. Whilst it is for the Court of Justice to say what the law of the EU is, it is for the national court to apply that law to the case before it.

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7 *Nolte*, Die Eigenart des verwaltungsgerichtlichen Rechtsschutzes: Grund und Grenzen, 2015, p. 60 f.
8 Ibid.
12 Ibid.
In an administrative law context, this means, in certain cases, that a national court is required to examine the legality of an executive decision taken from another Member State. A recent example of this is provided by the Court of Justice’s judgment in the Berlioz Investment Fund case.\(^\text{13}\) That case concerned a request for information sent by the French tax authorities to their Luxembourg counterparts, pursuant to the provisions of Directive 2011/16,\(^\text{14}\) concerning the Luxembourg parent company, Berlioz Investment Fund, of a French company, Cofima, whose tax affairs were under review in France. In response to an information order, Berlioz provided the Luxembourg authorities with most of the information but withheld certain details on the basis that they were not foreseeably relevant to the French review. The Luxembourg authorities therefore imposed a significant administrative fine on Berlioz.

At first instance, the Administrative Tribunal of Luxembourg reduced that fine but declined to determine whether the information order was well founded. On appeal before the Administrative Court of Luxembourg, Berlioz argued that its fundamental right to an effective judicial remedy had been infringed. Considering that an interpretation of both Article 47 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and of Directive 2011/16 was necessary in order to decide the case, that court referred the matter to the Court of Justice, asking, in particular, whether it could examine the validity of the information order and therefore, indirectly, of the French tax administration’s request for information on which that order was based.

The Court of Justice held that a national administrative court must be able to examine the substantive legality of an information order if it is to comply with the right to an effective judicial remedy, enshrined in Article 47 of the Charter. It also ruled that both the national tax authorities, when adopting such an order, and the court that carries out any subsequent judicial review, must be able to check that the information sought is not devoid of any foreseeable relevance to the tax investigation in another Member State. Thus, the Luxembourg authorities and the Luxembourg administrative court were indeed required, in order to ensure the legality of a measure adopted in Luxembourg within the scope of


EU law, to verify the foreseeable relevance to the French investigation of the information that the French authorities had decided to request.

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My third remark concerns more specifically the judicial dialogue that has taken place between the Korkein hallinto-oikeus and the Court of Justice under Article 267 TFEU since Finland’s accession to the EU and to the invaluable substantive contribution that your court has made, through that process, to the development of EU law.15 Several references made by the Korkein hallinto-oikeus were heard by the Grand Chamber of the Court of Justice, notably the two seminal tax cases Oy AA16 and Manninen.17 A good number of them concerned the protection of personal data and, in that regard, particular mention should be made of the Satakunnan Markkinapörssi and Satamedia case18 that, like Berlioz Investment Fund, concerned the confidentiality of tax information. It required the Court of Justice to strike a delicate balance between the right to privacy of private individuals and the rights of freedom of expression and of the press.

Personal data protection was also the key issue in the Jehovan todistajat case, in which the Court’s Grand Chamber gave judgment last month.19 It concerned the judicial review of a decision of the Finnish Data Protection Board (Tietosuojalautakunta) prohibiting the Jehovah’s Witnesses religious community from pursuing their practice of collecting personal data in the course of door-to-door preaching without the knowledge of the persons concerned.

Dealing with an appeal brought by the Data Protection Supervisor (Tietosuojavaltuutettu) against a first-instance ruling annulling that decision, the Korkein hallinto-oikeus asked the Court of Justice, in substance, whether the EU provisions on the protection of personal data, more particularly those contained in Directive 95/46,20 apply to the collection of personal data by that community and its members. I would like to say that the reference made by the Korkein hallinto-oikeus is an excellent example of the mutual assistance that should ideally take place within the framework of the dialogue between the Court of

15 For a recent example, see judgment of 25 July 2018, A (Assistance to a disabled person), C-679/16, EU:C:2018:601.


20 Directive 95/46/EC of the EP and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
Justice and national administrative courts. The reference contains a clear, complete and coherent summary of the facts of the case, as well as the text of the relevant provisions of national law. It also includes the referring court’s provisional view on the answers that might be given the questions referred, in accordance with the Recommendations to national courts and tribunals published in the *Official Journal of the European Union*.\(^\text{21}\)

Such suggestions are welcome as they assist the Court of Justice in assessing the consequences of a given interpretation and thus enable it to achieve a higher level of precision and clarity in its final decision.\(^\text{22}\) If only all references that we receive were so complete and well-drafted, our work would be more straightforward!

On the substance of the case, the Court of Justice found, first, that door-to-door preaching by members of the Jehovah’s Witnesses Community is not covered by the exceptions laid down by the Directive. In particular, the fact that the practice of door-to-door preaching is in itself protected by the fundamental right of freedom of conscience and religion, in accordance with Article 10, paragraph 1, of the Charter, does not confer a purely personal or household character on that activity, given that such an activity extends beyond the private sphere of the individuals carrying out the preaching.

Second, the Court of Justice held that the structured set of personal data collected, which can easily be retrieved for subsequent use, falls within the concept of a *filing system* under EU law, and must thus comply with the provisions on the protection of personal data.

Third, the Court observed that the Jehovah’s Witnesses Community apparently participates in determining the purposes and means of processing of personal data of the persons contacted, and ruled that it may, on that basis, be regarded as a *controller*, jointly with its members, in respect of such data under the relevant provisions. As the Court of Justice stated, that will be for the Finnish administrative courts to verify, since only national courts have authority to rule on the facts of the case.

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This brings me to my fourth and final point. It concerns mutual trust.

The reasoning adopted in the judgment of the Court of Justice in the *Jehovan todistajat* case was based, to a significant extent, on the provisional legal analysis carried out by the *Korkein hallinto-oikeus* in its reference for a preliminary ruling. Of course, the Court of


Justice will not always agree with the outcome suggested by a referring court – otherwise it would not be doing its job – but I would submit that its willingness to engage with the legal analysis carried out by that court is an important factor in fostering the culture of mutual trust that the preliminary ruling procedure requires in order to fulfil its purpose of ensuring the primacy, unity and effective application of EU law. Indeed, just as the Court of Justice trusts national courts such as the Korkein hallinto-oikeus in its assessment of the need to make a reference, it is essential that national courts feel able to trust the Court of Justice to deliver, within a reasonable time, well-reasoned judgments that not only enable them to solve the case at hand, but also to take due account of societal changes where appropriate, not least in a fast-developing field such as data protection.

The fifty-five references for a preliminary ruling made from Fabianinkatu 15 [postal address], here in Helsinki, are I believe, a testament to the success of the judicial dialogue that has taken place over nearly a quarter of a century between the Court of Justice and the Korkein hallinto-oikeus. From the Court of Justice’s perspective, “Together” was thus indeed a particularly apposite theme for Finland’s centennial celebrations. I deduce from the close cooperation that has taken place in practice between our two courts that the Korkein hallinto-oikeus has confidence that the Court of Justice will be faithful only to the law of the EU. From our side, I can assure you without hesitation that we, the members of the Court of Justice, feel able to trust our colleagues in your court to apply the law of the EU faithfully, paying due regard to the case-law and thus to the principle of the rule of law, regardless of any political or other extraneous considerations.

I am confident that this high degree of mutual trust and cooperation that has been built between the Korkein hallinto-oikeus and the Court of Justice will continue to be the bedrock of our relationship for many years to come as the Korkein hallinto-oikeus enters its second century. The Court of Justice wishes you all the very best for the future, a future that we shall definitely be facing… Together.

Thank you very much for your attention.