*International Meeting*

How the Constitutional Courts decide

Descriptive and normative perspectives

*Milan, May 25th 2007*

**Report by Justice P. Grimm**

(first draft)

I think I will start my report on Germany with some general remarks which I think will be helpful in understanding what follows. First of all, differently from Israel whose report we heard this morning, the German constitutional court, as the name says, is not a general supreme court, but it is a special constitutional court of Kelsenian model, as some people would call it, meaning a court specialized on constitutional issues. But I think that one should not overestimate the difference. Much depends on the powers that a constitutional court has and much depends also on whether the doors to the constitutional court are widely open or are very strictly closed. And the German constitutional court is a court to which the doors are widely open, which is of course a consequence of our totalitarian past in the Nazi period, to which the German constitution, the Basic Law, reacted. If there was one conviction that everybody in the "Parliamentarian Counsel" that drafted the German constitution shared, that was the conviction that never we had to go back to something like the collapse of the Weimar democracy and the following totalitarian system. One of the measures in order to make this, to operationalize this conviction, was the establishment of the Constitutional Court and, as I said, the doors to that court are widely open. When you look to the provisions in the constitution that describe the powers to the constitutional court and when you in addition look at the statute on the Constitutional Court, you will find almost twenty items of powers attributed to the Constitutional Court and I would like to name only the four or five most important ones and not all the rest.

First of all, it has competence on everything that has to do with the separation of powers; for those who understand German, this is the so called "*Organstreit*" among the organs of the federal republic.

The second important competence is concerning federal issues: Germany is a federal society, a federal country, and so all the possible conflicts between the federal republic, on the one hand, and the *Länder*, on the other hand, can be brought to the Constitutional Court.

Then we have *Normenkontrol*: "judicial review" is probably the English-American term, in two forms. One is "abstract" norm control, that's to say that a very limited number of organs have the power to bring an "abstract" norm control: the opposition in parliament, any *Land* government and the federal government. The "abstract norm control" (abstract judicial review) takes place immediately after the end of the parliamentarian process, immediately after the Parliament has voted. This lawsuit can be brought to the Constitutional Court and it's abstract as far as this statute has not been applied; when it comes before the Constitutional Court, we have no practical experience with it. The issue: the controversy does not arise out of case and controversy, as the American says, but it is an abstract review. The other type is the so called "concrete" review; this is the referral by judges. In Italy, of course there is the referral of judges of lower courts. In Germany judges of lower courts are entitled to review laws as to their constitutionality. But they are not entitled to declare laws null and void, that's to say that if they come to the opinion that a law, that they have to apply in a concrete case, is unconstitutional, they have to refer that case to the Constitutional Court. The procedures in the ordinary courts state that they wait for the answer and then either in this or that way they continue the ordinary procedures. And the fifth important one, out of these almost twenty powers of the courts, which I want to mention is the individual complaint: "amparo" in the Spanish language, which in Italy it does not exist.

Now, I said the doors are widely open and my argument was looking at the big number of competencies of the court. But I think even more important is the question of jurisprudence: how are these competencies and these powers interpreted by the court. And when I say that, I do not only mean questions of standing, of admissibility. We heard this morning that in Israel this is almost absent. Everybody who has a claim, under constitutional law is welcome in the Israeli Supreme Court. This is not the case in Germany: we have standing provisions and admissibility provisions, but what I think is much more important is the substantive interpretation of the constitution and, there, when I look to fundamental rights, for instance, I see that the court gave an interpretation of the substantive provisions of the constitutions that makes it easy for people to arrive with their problems in the Court. First of all, the Court interpreted one very general fundamental right, article 2 section 1: "everybody has the rights to free development of his or her personality". The court interpreted this provision in a very broad sense meaning, that it covers everything which is left open by the following individual human rights, so that every burden that is put on your shoulders, every state act that in someway burdens you may be brought to the Constitutional Court. If not under freedom of press, or protection of property, or inviolability of the home, then you can come under article 2 section 1: freedom of development of your personality. So there are no gaps. Although, they might have been originally gaps between the individual fundamental rights. This closes the system and there is a full fledged, gapless system of fundamental rights protection.

Then, in addition, when it comes to judicial review, the court very early said that judicial review doesn't only extend to reviewing the laws, it also extends to reviewing the interpretation and the application of the laws, by other courts or by administrative agencies. So what you can question in the constitutional court is not only that the law violates you in some of your fundamental rights, but also the way in which it was interpreted and applied violates one of your fundamental rights.

Finally, only to mention the three most important movements of the Court, finally, it derived in mid-seventies of the last century, from fundamental rights, an obligation of the state not only to refrain from violations of fundamental rights − this, anyway, can be taken for granted − but the Court derived from fundamental rights an obligation of the state to protect people against threats that are brought to their fundamental rights not from the part of the state, but from federal citizens and, also, spiteful forces. And this duty to protect people against menaces for their fundamental rights, for their freedom − that come not only out of the state, but from fellow citizens − this obligation is fulfilled by legislation, legislation that protects fundamental rights. And this means that persons even have under certain conditions a claim to require legislation. And the Court obliges the legislature not to make a certain law, but a law that addresses to a certain problem. So I said this in order to show you how much depends, on the accessibility or access to the Court, and on the substantive interpretation of the constitution. Taken together, I can say that in Germany it is very unlikely that any important issue that really concerns society escapes the Court. If the politicians with standing in the Constitutional Court don't bring the action then the citizens will do it. So it's very extremely unlikely that any important issue would not arrive at some time in the court.

The court gets about, it is now over the limit of 6000 cases each year. During my time, which is now seven or eight years ago, we were slightly over 5000. The court is now slightly over 6000. So it's almost the amount that the US Supreme court gets, which is around 6500. 95 % of these lawsuits, litigation, in the Constitutional Court are individual complaints. And the second biggest number is referrals from lower courts, and all the rest is very small in numbers. Abstract norm controls, for instance, is maybe two per year; federal issues are maybe three or four per year, so everything else. Most of these questions, when they come, are very important, but in number and quantity they are very small.

Now I think what interests the organizers most, and we can see it from the title of the conference, is the internal decision-making process. And I will concentrate on this internal decision-making process. But again I would like to make a few preliminary remarks which, again, I think may help to understand the deliberation process.

The first remark is that the German Constitutional Court has sixteen judges sitting in two panels (*Senates*), that is to say two panels that have eight judges in each panel. The work is divided according to subject matters, so when a case comes one can see from the table of subject matters whether it goes to the first or the second *Senate*. There are of course some cases where doubts may arise and in these cases a joint committee of both *Senates* decides. It was interesting for me to see that we never had a negative conflict of competencies, that's to say we never had the case that none of the *Senates* wanted to have. We always had positive conflicts of competencies: both claimed the case for themselves. But then, as I said, a small joint committee decides.

The work within a *Senate* is divided, as well, according to subject matters. So when the question has been decided which Senate is competent, then the question comes which individual member of the court is competent to prepare the case. This is the system of which President Barak said that Israel does not have it and does not want to have it: mainly the system of a judge *rapporteur*. For each case that comes, one judge is responsible to prepare the case for his or her colleagues.

I think a second question − which we did not address this morning, but I think which is very important for us as a preliminary question, when it comes to the deliberation process, the decision-making process − is the recruitment of judges. I think there is a link between the system of recruiting judges and the way they decide. The recruitment process in Germany is that half of the sixteen judges − a personal requirement is that potential members of Constitutional Court have to have a law degree and have to be over forty years of age, and this is all − are elected by one house of parliament: "Bundestag". The second half is elected by the other house of parliament: "Bundesrat". It is very important that a super-majority is needed to elect

the judges: the super-majority is a 2/3 majority. Now, a political party in Germany has never even come close to a 2/3 majority. But usually the two big political parties, Christian Democrats, on the one hand, Social Democrats, on the other hand, mostly jointly reach the 2/3 majority. This has led to a practice and the practice is that the two big political parties have − so to say, informally speaking − divided the seats among themselves. That's to say as soon as there is a vacancy one knows which party may make the first move and mention the name of a candidate. Of course no party alone can decide, but one knows immediately which party may name a person, a candidate. And now of course in such a system I think two practices could develop. One practice is − and this happens very often in cases where 2/3 majorities are necessary − that the parties agreed: if you let my candidate pass, I'll let your candidate pass. Surprisingly, this did not happen when it comes to recruiting judges of the Constitutional Court. It does not happen. It is a very serious negotiation among the political parties and it very often happens that the candidate that is first mentioned by one of the parties is vetoed by the other party. This doesn't mean that then the informal right to nominate someone shifts, but then the party has to make a next try. The formal decision is usually unanimous in the two houses of parliament, which shows at the same time that the division of the power to elect judges between the two houses of parliament became more or less unimportant. Because this negotiation of course is done among the leaders of the two big political parties regardless of whether the one house − the upper house or the lower house − has to make the decision. It is interesting because it produces a certain type of judges, of justices in the constitutional court: it prevents extremists. An extremist of one or the other side wouldn't have a chance. Unless he or she has managed to hide, totally hide, his or her preferences, political effigy or what do I know; but that doesn't happen very often. Certainly, not with the professors in the constitutional court because professors always have to speak up, they have published. So it prevents extreme candidatures and extreme judges. And it develops a tendency toward the middle line, a tendency toward the mainstream. And although there is no

quality criterion inbuilt in the procedure, it has more or less contributed to a quite high quality of the members of the constitutional court. Dozens apply all the time, one has ups and downs of course, but in general I would say it contributed to a rather considerable high quality.

Ok, now the deliberation process, and you will see that there are some relations between what I said now and what I said before.

I should mention one thing in advance, not all cases that come to the Court have to be decided by a full panel [Senate]. It would be impossible for us. I admire you [the Italian Constitutional Court] that do it more or less with all constitutional questions, but individual complaints and referrals have to be decided by the full panel only when they present a new question or a question that should be considered a new one. But if questions have to do with a problem that has already been decided, then these individual complaints can be handled in a simplified procedure. Simplified procedure means that three judges decide whether they accept the case and decide it on the merits or whether they dismiss the case; these subgroups of three judges are called Chambers. The Chambers can only decide unanimously, if only one disagrees the case goes to the full Senate. Now, I say that because the Chambers do not deliberate, the judge *rapporteur* writes a short memo and writes a draft opinion, mostly very short opinions, and circulates these among his two other fellow colleagues in the chamber. And only if someone requires a deliberation, which happens very rarely, then it takes place. So these simplified procedures cover, I would say, almost 95% of the big number of individual complaints – so only about 5% of the individual complaints reach the full panel [Senate].

When I speak of deliberation, now I'm always speaking of deliberation in the full panel of eight [the Senate] and I leave aside the rest. How does it work? First of all, I think that one cannot underestimate the importance of the judge *rapporteur* in our system. What does he or she do? The judge *rapporteur* prepares the case for his fellow judges, for the full Senate deliberation. He does that in various ways: first of all, it is

the judge *rapporteur* who asks for statements: information that the Court may want to have for its decision. For instance, if it is an individual complaint, he asks for a statement of the winning party in the ordinary courts. Always the competent minister, the federal minister, the states/Länder ministers are asked for their opinion. He or she is very often the minister of justice, but according to subject matter it can be the minister of social affairs, it can be the minister of the interior, etc., etc. Then, interests groups or expert organizations are asked for statements; citizens movements, NGO's are asked for statements; and sometimes it happens that organizations say: "Well, you asked our competing organization, you didn't ask us". We may not even have known that there was a competing organization and then of course we would invite them, too. So, there are a number of statements and information on the factual side brought to the attention of the Court.

The next step is that the judge *rapporteur* writes a memo for his fellow judges. Memo looks like a very brief statement, and it can be brief in easy cases, but most cases that are dealt with by the full panel are not easy cases. So that may be a very lengthy text. I think in my twelve years in the court, I wrote a number of books which are not published, of course: mainly memos. In a very important judgment on the structure of the TV system, I wrote memos of more than 300 pages. In these memos, first of all, there is a statement of the development of the effect. Then, there is a statement of all the other statements that came in. Very often there is a statement of how foreign countries, foreign jurisdictions handle these problems. And then, the legal task begins and the judge *rapporteur* develops a proposal of a solution for the case. He does not add a draft opinion, but he stops with a memo and the memo ends with a suggestion: I would declare the law null and void or I would say that no violation of the fundamental right can be found. For me it is extremely difficult to imagine that the quality of the jurisprudence of the German constitutional court would be as high as it is without the system of the judge *rapporteur*. It would be interesting to discuss this question with countries where it does not exist, but I'm pretty sure that the quality of our decisions

would decline without these preparations by the judge *rapporteur*. By the way, the memo that is circulated by the judges is accompanied by the full file. So a judge who is not the judge *rapporteur*, who doesn't want to read the full file gets a very good account of everything in the lengthy memo. But as far as I could see, many of them read the file in addition to the memo. So normally when the deliberation starts, people are well prepared.

Now for the deliberation itself, the judge *rapporteur* briefly memorizes the case in five minutes, or so, just to refresh the memory of people and then the deliberation starts. And what is, at least for me, the most important thing is that in our Court there were no coalitions of judges, no factions so to say, no judges who almost always voted together and discussed before the deliberation how they would vote: this was totally absent. There were no groups that always went together. So there was always an open discussion and arguments mattered. So I must say for me this was the most important and enjoyable part of the job: these deliberations, every week for two days, in the Senate. I very often compared them, since I was a professor before and a professor now, I very often compared them with the academic discourse. I think that academic discourse from time to time was perhaps more inspired or witty and brilliant in intellectual terms. But still it was not as rewarding as the deliberation in the Constitutional Court and I think the decisive difference is that you have to reach a decision; *a common decision*, all the eight have to reach a decision. And they are aware that what they decide will be the law of the land, maybe for many years. And you couldn't walk away if your arguments were not heard or you couldn't leave anyone out because you needed everyone's vote afterwards, so it was necessary to take every participant serious. Exaggerating a little bit, I would say, since the name of Habermas was several times mentioned this morning, it comes close to Habermas ideal discourse. Not totally of course, everybody has its limits; sometimes I was extremely sad when I saw that people were no longer willing to argue because their limits of deep convictions had been reached. But I'm sure that the same happened for them with me. One

doesn't so much realize his own limits; one realizes more the limits of others. So I'm pretty sure I had my limits, but in general I would say an argument mattered: you could really reach something with an argument. And always I would say that after the deliberation I was wiser than before.

Very often there was no formal voting: after the deliberation it was clear what the solution was and then usually the president said: "My impression is that everybody agrees that we declare the law null and void or that we reverse the decision of the lower court". And if one was not of the opinion, he or she could of course oppose or the president would say: "I saw only two people of the eight strongly in opposition to the solution that the majority looked for if it was right or not". And if people noted that there was no formal voting, but if things were unclear, then of course one had to vote.

Usually, it was for one case a deliberation of a half day, meaning three hours. But of course there were cases where a half hour was sufficient and there were cases which took weeks and weeks. The second abortion decision of the constitutional court took as long as a pregnancy lasts: mainly nine months.

And then the judge *rapporteur* drafts the opinion and, this is the continental conception, he drafts the opinion regardless if he was with the majority or the minority. Fortunately, I was never in the situation where I had to draft the opinion of the other side. There was once, in these twelve years, a case where the vote was four to four. There is a provision in the law on the Constitutional Court according to which, in order to declare statute unconstitutional, you need a majority; so four to four means the statute stays. But in this case, both positions are presented equally in conference. It's not like a dissenting position, but both positions are presented equally. And thus in the only case in which, in my twelve years, this has happened, I unfortunately was the judge *rapporteur*. So I had to write for both sides. But I found that the other side was so terribly wrong that I had difficulties in writing, but I did it; I fulfilled my job. And when I presented the draft, the four others said: "Well, I think this is not a good account of our opinion". And I said: "Your opinion was so bad that I couldn't do it

better, but I'm very happy if someone of you does it". And then they agreed and they assigned this part to one of their side.

The opinion of the judge *rapporteur* is circulated and then there is always a second deliberation, where the draft is read page by page. And everybody may make suggestions for changes. This was for me always the most difficult part because I thought that I am a good writer and that I'm a logical writer and so I may be wrong, but this was my best possible phrasing of the decision. So this was for me a very difficult part; on the other hand, I made a lot of use of this possibility when the others wrote, so I shouldn't complain. Sure there is a certain predominant role for the judge *rapporteur*, but one can really say that the final outcome, the final text of the opinion is a collective work and is not the work of an individual.

So far concerning deliberations, and now there is the second part that played a big role this morning and again I know that the organizers are very interested in it: dissenting opinions. We heard a few words on dissenting opinions already this morning. This is not in the tradition of the continental civil law systems and it is not in the tradition mostly for two reasons. The first reason has a methodological root: for a very long time the conviction in continental jurisprudence was that a legal issue can only have one correct answer, it may have many answers, but only one is the correct answer. And the Court is there to find the correct answer. And so the personality of the judge is unimportant, it doesn't play a role. He or she is, in a sense, *la bouche de la loi*. And the second reason I think is that the courts started not − like in the US and Great Britain − as more or less independent bodies of civil society, but as part of state organizations. And there again the individual has a role to play as a civil servant. For a very long time, judges were regarded as civil servants with another function than a servant in an administrative agency. I think these are some of the roots, there may be others. So this is still the case: no dissenting opinion, no names are given. This is still the case in Germany for all courts except the German Constitutional Court. And, as it has been mentioned this morning, it was not there in the beginning, when the statute

on the constitutional court was drafted. The social democratic party in Parliament had asked for dissenting opinion from the very beginning. The conservatives were against it, but then, in the late 60's, times of great changes in Germany, there was a strong movement in favor of dissenting opinions, at least in the Constitutional Court, which was regarded to be a more political court than the rest of the courts. And this came through in the early 70's. So from the early 70's on, we have the dissenting opinion.

If someone wants to file a dissenting opinion he has to announce that before the end of the deliberation and then he or she has two weeks to write the dissenting opinion and it is published with the opinion; it is part of the opinion, but it is an annex, so to say, it's not like in the four to four decision. It was rightly observed this morning that in Germany dissenting opinions are rare. Rare at least when we compare it with the US Supreme Court. Why is that so? I will offer a few possible explanations. I think one explanation is the recruitment procedure and here I see a link between the procedure of electing or appointing judges and the fact/the number of dissenting opinions. If the recruitment process has a tendency toward the mainstream, if it excludes extremists, then I think the number of dissenting opinions will be smaller. If the ruling party has a possibility to appoint its followers as long as it is the ruling party, and then there are still some justices of the opposing side, the tendency to write dissenting opinions will be bigger. A second offer of explanation, of course, is the tradition: there is no tradition of dissenting opinions and I knew of a number of my fellow judges who said: "I will never write a dissenting opinion even if I'm in the minority". I don't think that the court should speak with many voices and I prefer a court that speaks with one voice. I hate nobody that files a dissenting opinion, but for me personally, I made the decision that I won't do it! My predecessor for instance – very famous I think also in Italy, Konrad Hesse – made the decision: "I would never file a dissenting opinion". And you find this attitude more with the professional judges. The law requires, that in each Senate there are three professional judges from the various highest courts, who don't have the possibility to file a dissent in their courts.

Whereas people from other legal professions are a little bit more inclined to file dissenting opinions. Then, I think, that the deliberation itself, that's to say the way how court deliberates is extremely important. There is a point where I don't totally agree with what President Barak said this morning. You may recall: he said there is a difference between US Supreme Court and the rest of the courts, at least continental type courts. Out of their 6500 cases, the US Supreme Court takes only the fifty, sixty or seventy highly controversial ones, which is true. But I don't think it that this is necessarily a full explanation for the fact that so many dissenting opinions exist in the US. First of all, it was not always the case. The fact that the American Supreme Court selects only the high controversial cases is old, but this high number of dissenting opinions is rather new. So I think, it cannot be the only explanation at least. On the other hand, we in the German Constitutional Court, we have a lot of highly controversial cases, and nevertheless it happens that we come out unanimously or, if we do not come out unanimously, it happens that people do not write dissenting opinions. So I think it has a lot to do with the type of deliberation and if it is a real deliberation (as I said earlier in my former court, there were no coalitions or fractions of judges, and their political affiliations had no significant role). When there is a real deliberation, where argument matters, and where everybody makes an effort to listen, when the judges start with an attempt to see if they can come out unanimously (this is the case in Germany), there is an attempt to see if we can find a way that we can all agree. Not at any rate. As it has been said, there is a limit where you don't make any compromise anymore. But a preliminary attempt to see if we can come out unanimously, if that exists, makes a difference in regard to dissenting opinions. And this spirit does not exist in the US Supreme Court. There is not the spirit at the beginning: "let's see if we can develop something in common", it does not exist. It did exist earlier in the history of the Supreme Court, but no longer. And then of course, this is the most important difference: the US Supreme Court does not really deliberate. After oral argument, they meet in the deliberation chamber, but they do not deliberate. The Chief Justice asks,

beginning with the youngest one: "How do you vote?" And he says: "I vote to reverse the judgment of the lower court" and he gives one sentence as reason why he votes so. And then the way goes up to the Chief Justice. The deliberation comes later, after the decision has been taken, and then people write their dissenting opinions, they circulate them. So it's the deliberation after the decision-making and in writing. It may have an impact; it may change. They can resume the case and can change their vote, but usually this is not the case in the US Supreme court. And I think it is a waste of possibility, a waste of coming out better and more unanimously, not at any rate. And of course it explains dissenting opinions. If in a deliberation every side makes a move, you may not be totally satisfied, but you see that the other side is also not totally satisfied and the outcome is a viable way to solve that problem. Then you ask yourself: "Should I really, because of the small portion that misses, should I really write a dissenting opinion or not?" I wrote in my twelve years two dissenting opinions and this does not mean that in all the rest of the cases I was with the majority, certainly not. First dissenting opinion: this was a seven to one case, I was the only one, but it made me believe it became a very famous dissenting opinion. Perhaps it is my biggest success, because you wouldn't find any German law student who doesn't know this dissenting opinion, which is one of the two I wrote. But of course I remained alone and I didn't gain "the majority of tomorrow", as it is always said.

The effect of coming out unanimously or the effect of coming out with a split vote is very difficult to evaluate. And I really can't say what happens when that is the case. It sometimes happens that the existence of dissenting opinions contributes to pacifying a divided society. The losing side says: "Well, at least we were not totally alone; there were a number of the judges who shared our opinion". Sometimes the opposite is right: the split vote aggravates, so to say, the division in society. If it hurts the authority of the court decision, I don't know. I don't think it does: also a split vote is sometimes used to destroy the authority of the court, but I don't have the impression that it really hurts the authority of the court.

Well, I wanted to say something about the case law, but time goes on so I think I'll skip that and I'll make a very short final remark about "acceptance". The German one is a very activist Constitutional Court in terms of the popular distinction between activist courts and courts exercising a lot of self-restraint. This is certainly a very activist court, it is certainly activist when compared to the US Supreme Court. Think of what I've mentioned in the beginning: the court obliges legislature to legislate, which is unheard of in the US, where it is unthinkable that the court would do that: interference in foreign policy matters or interference in security policy matters. It is a very activist court, not as much as the Israeli one, but certainly much more than in the US. So it is a very activist court. Nevertheless, the compliance of politicians is extremely high, even when it comes to obliging the legislature to legislate. In cases like these, the court is in a bad position; the court is in a good position when it declares a state decision null and void, because then this decision is done and a government would have to make the difficult choice of reenacting immediately afterwards the same statute. It's unlikely that in a well functioning constitutional system this will happen. But when it comes to imposing obligations on the state, the Court is not in a good position. The state legislature or whoever may just lean back and say: "So what?" And the Court doesn't have the means to impose its decision. Nevertheless, the compliance is extremely high. It's sometimes even an over-compliance. The ministers, the politicians interpret the decision of the constitutional court as if it were the constitution itself and would ask themselves: "What would they want us to do?" When the Court, very often, leaves a wide range open, saying: "You can't do it the way you did it, but the way you want to do it is open for you", they will ask themselves: "How do they want us to do it?" So it's even over-compliance. Why is that so difficult to explain? I think it has something to do with trust in the Court that was what you've mentioned. It has something to do with trust of the society, of the population, in the Constitutional Court. And there I find it's helpful to distinguish between two things: trust in the institution or acceptance of individual decisions. It very often happens that the society,

or substantial parts of the society, totally dislike decisions of the constitutional court. But nevertheless, the trust in the institution is very high. And if this is the case, if the trust in the institution of the Constitutional Court is very high, then it becomes costly for politicians to disobey. So I think this is the most important point: the trust of the society in the Court, which then produces compliance by the politicians.

I remember I was on the Court in the times of these major changes in the world after 1989-1990. Well, delegation after delegation from the former socialist countries and other countries like South Africa came to the German constitutional courts; probably to your courts as well. First, the parliamentary delegations who drafted new constitutions, then the newly elected constitutional courts. And they had a lot of questions, but one question was asked by every delegation. And this question was: "How do you arrive at a situation where politicians comply with the constitution and with the rulings of the Constitutional Court even if they are in total disagreement with that?" And this question is difficult to answer and my answer was always: "They will do it when disobeying becomes too costly". And disobeying becomes too costly when they are blamed for disobeying by a society who trusts the Court and backs the Court. And happily enough, this was the case in Germany and it is still more or less the case. Things can change very soon, one can never rely that things remain as they are. But I think this was my most important answer.

Perhaps the most controversial decision that the constitutional court ever rendered was in 1995, when it declared null and void a Bavarian law that required a crucifix be displayed in every classroom of elementary schools. This caused massive demonstrations. Bishops walked in front of the Constitutional Court and protested against it. And I remember my colleague, Ernst-Wolfgang Böckenförde told me: "After this decision the Court will never be again what it used to be". And I didn't believe him and the Court was the same what it had been before, after three months. Thank you very much!