

# Forewords

Some anniversaries deserve to be marked with particular ceremony. This is especially true when the anniversary in question – the 50th, in this case – is that of an international court such as the European Court of Human Rights.

As Minister of Foreign Affairs of the Grand Duchy of Luxembourg I have a particular attachment to the subject of human rights. I am therefore immensely proud to have the honour of writing one of the forewords to this volume, which is being published to mark the Court's 50th anniversary.

When the first volume on the European Convention on Human Rights and Luxembourg law was published an especially well-informed observer, former Registrar Marc-André Eissen, remarked in 1991: 'Luxembourg ... [provides] an excellent example in the human rights sphere. Perhaps precisely because, unlike some 'powers' which have larger territories and populations, it does not cherish any fanciful ambitions and is not haunted by nostalgia for the glory or hegemony of the past.'

By depositing the tenth instrument of ratification on 3 September 1953, Luxembourg triggered the entry of the European Convention on Human Rights into effect at international level. Although arguably the result of an accident of timing, the depositing of the instrument of ratification by Luxembourg nevertheless has a symbolic, not to say historic, significance. Antoine Wehenkel, the rapporteur on the draft law approving the Convention, stressed the importance of ratification in the following terms: 'Let us ratify this excellent text. By ratifying it we will be bringing it into effect, not just in our own cherished country, but also in those countries which have ratified it before us. We should be proud of this instrument we have helped to create, which will form the foundation for the democratic Europe we wish to see, an instrument based on peace and freedom, which alone has the power to defend our peoples against those who might wish to subject them to tyranny under whatever banner.'



In interpreting and applying the Convention the European Court of Human Rights has, for 50 years and in accordance with its mandate, played a pivotal role in ensuring observance of the obligations arising out of the Convention for the High Contracting Parties. This publication retraces the history of that institution, the only one of its kind in the world. The anniversary book is a felicitous mix of individual contributions from judges and former judges, members of the Registry and illustrious figures from outside the Court, and it contains interesting information on such topics as the Convention institutions, the history of the Court, its organization and functioning and the buildings that have housed it over the years – all complemented by a wealth of illustrations and photographs. Readers will also find portraits of former Presidents of the Court and the Commission and other leading figures in the Registry and Secretariat. In this context I am particularly pleased and proud to point out that in 1954 an eminent figure from Luxembourg, Paul Faber, at the unanimous request of his peers, accepted the task of presiding over the first sessions of the Commission.

It was therefore with great pleasure that I decided, in my capacity as Minister of Foreign Affairs, to lend support to this remarkable project. This publication, in the two official languages of the Council of Europe, will enable a wide readership to gain an insight into the European Court of Human Rights. Combining academic material and some lighter touches – the allusion by the General Editor, Jonathan Sharpe, to Benjamin Britten's *The Young Person's Guide to the Orchestra* is a particularly eloquent example – this book celebrating the 50th anniversary of the Court provides the Grand Duchy of Luxembourg with a calling card that it will be honoured to present.

**Jean Asselborn**  
Minister of Foreign Affairs  
Deputy Prime Minister

The present publication is an important element in the programme of initiatives and events that have marked the first 50 years of the European Court of Human Rights and, in 2010, the 60th anniversary of the European Convention on Human Rights. This special occasion for the Court has been commemorated throughout 2009, beginning in January with the solemn ceremony opening the 50th judicial year. The festivities have not been confined to official circles or to selected guests; there have also been events open to all, including a busy open day at the Court's building in September 2009 and lunchtime concerts in the hearing room in the spring of 2010. All these celebratory events will be long remembered.

One of the purposes of this book is remembrance. The Court is a human institution, dedicated to the protection of human beings. The protection of human rights is a noble calling, and many have served it nobly at Strasbourg. The following pages look back to the inception and growth of the Court, the people who composed it and who came before it and the events and achievements that go to make up a fascinating institutional story. Many names are writ large in the history of the Court, beginning with McNair, Cassin, Rolin and Balladore Pallieri. Their portraits are to be found in these pages, which recall the crucial early achievements won through patient endeavour and perseverance. Extracts from speeches made at significant moments down the years have been included to convey directly to today's readers the reflections and aspirations of those who served the Court over its history.

Many of the present members of the Court have contributed to this volume, offering their personal thoughts on cases they deem to be especially significant in relation to their countries. It is a fascinating personal selection of mainly recent judgments, illustrating the great diversity of context and circumstance that has always been, so to speak, the Court's daily bread.

This book also looks ahead to what the future may hold. Some of the proposals made at various points in the past ten years are set out, up to and including the milestone conference at Interlaken in February 2010. Growth and adaptation are vital qualities in all living things. I hope that the contents of these pages, which tell of an enduring commitment to the protection of fundamental human rights, will encourage and inspire the present generation to whom the Convention's future is entrusted.

Beyond the institutional and legal dimensions, the Court's history is also to be told through the personal recollections of those who were part of it for a time. Several contributors have shared some of their personal recollections of their time at Strasbourg, and through these readers will learn some of the lore that has built up in an institution that has reached the half-century mark.

In conclusion, I should like to record here my thanks to the government of Luxembourg for its kind support in publishing this book. My thanks also go to all of the contributors, as well as to those who within or close to the Court conceived the project and brought it into being, especially Jonathan Sharpe.

**Jean-Paul Costa**  
President of the European Court of Human Rights



## General Editor's Note

Little did I imagine when I left the Registry of the European Court of Human Rights in 1993 that I would one day be invited to assist with editing a history of the institution with which I had spent so much of my career at the Council of Europe. I was pleased to receive the invitation but also somewhat surprised in that I had not witnessed at first hand the developments that have taken place in the intervening years that have transformed the Court almost beyond recognition. Yet, despite all the changes, it is not difficult to discern a common thread running through the life of the Court, responsible as it is for protecting certain fundamental ideals and values that are eternal. In any event, my colleagues on the Editorial Board were there to put me right when I got the wrong end of the stick, and in exchange I was able to recount some facts and events from former times of which not all of them were aware. This goes to illustrate that my title of General Editor does not really reflect the reality, in that the members of the Board worked together as equal members of a team, and it is right that I should record the convivial atmosphere that characterized our discussions.

When the Editorial Board began to reflect on a fitting means of marking the Court's 50th anniversary, it had to take a number of basic decisions. To write a full and complete history of the Court, starting with the extensive preparatory works on the Convention, would have required volumes rather than a few hundred pages, and time was not available for that. Nor was there seen to be a need for a treatise on the Court's procedure and case-law, on which many excellent publications already exist. Sights were thus aimed at a publication that would be unique and of high quality, grouping around a central skeleton individual contributions and some documents of historical interest, together with pictorial material. The work was to be destined for the general reader wishing to increase

his or her knowledge of the Court as an institution, so that it was necessary to steer between the Scylla of lengthy academic comment on the Court's case-law, of which an abundance already exists, and the Charybdis of a 'Young Person's Guide to the Court', which would not have been appropriate for the occasion being celebrated. Within these confines and save for a few instances where topics were suggested, contributors were left with freedom of choice. Thus it is, for example, that the contributions by members of the Court relate to a number of very different cases selected by the individual writer, and they serve to illustrate the very wide range of the subject-matter of applications coming before the Court. No attempt is made to focus on judgments that might be considered sensational, that attracted the most media attention or that had the most impact. With over 10,000 judgments now delivered by the Court, making the selection would have involved sensitive and subjective choices and would have been well-nigh impossible in a book of this kind. Indeed, as Professor Lawson points out, it would be physically impossible to analyse, for each judgment, its actual impact in each of the 47 member States.

It falls traditionally to editors to express thanks to those whose contribution has served to bring a project to fruition. I cannot but begin by repeating, on behalf of the Editorial Board, the appreciation expressed above by President Costa for the generosity of the Grand Duchy of Luxembourg.

I must then thank in the first place all the various contributors, many of whom could have proffered a 'Sorry, too busy' but did not do so. These thanks are due equally to a number of authors whose contributions, to the Board's great regret, could not be included for reasons of space.

The book would never have been completed without the invaluable assistance of many people. A special mention must be made of Egbert Myjer, whose enthusiasm



*The Editorial Board (left to right): Dean Spielmann, Jonathan L. Sharpe, Giorgio Malinverni, Egbert Myjer, Michael O'Boyle, Leif Berg, Peter Kempees and Mark E. Villiger.*

for the project and never-ending unearthing of new ideas kept us all on our toes. I have to reserve a special word of thanks for Leif Berg, who, from within the Registry, provided invaluable administrative and logistical support in addition to his functions as a Board member, and to record our gratitude to all those Council of Europe and Court Registry staff (not forgetting the ever-patient translators), too numerous to name, who contributed in one way or another to this project. And, of course, the Board cannot thank sufficiently Third Millennium Publishing, without whose generous advice and professional skills we would have been left with but a poor shadow of the product that finally appeared.

I will conclude by some purely personal observations that are not intended to reflect the views of the Editorial Board or of the Court itself. A tantalizing aspect of this book is that, explicitly or implicitly, it leaves some unanswered questions. Thus, could it be supposed that, if the Court and its protective machinery did not exist, States would today accept that they be created on the same conditions and with the same scope and powers? Will current budgetary restrictions, understandable in the present economic circumstances, and especially the policy of zero budget growth relentlessly pursued by the Committee of Ministers of the Council of

Europe, be allowed to undermine the Strasbourg system and, hence, the fundamental values that it is designed, and that the States have undertaken, to protect? Will the States react with sufficient speed and energy in implementing the recommendations made at the Interlaken High Level Conference? Will the steps taken prove to be sufficient or will there be yet another lengthy waiting period before more fundamental reforms see the light of day? In the matter of the protection of human rights, what will be the future role of the European Union, and will that role develop in a manner that avoids duplication and divergences with the Strasbourg machinery?

I will not attempt to answer these questions but will leave them to be considered by the readers of this book. As they do so, they should recall that – as Michael O'Boyle so clearly illustrates in his contribution – the Court has thus far survived and flourished despite various trials and tribulations. It is as if the fundamental importance of its aims and objectives gives it an inner strength and resilience. May any future edition of this history record that this continued to be the case.

**Jonathan L. Sharpe**  
*Principal Administrative Officer and then  
Head of Division in the Registry of the Court, 1976–93*

## PRESENTATION TO THE COURT OF THE FOUR FREEDOMS AWARD

On 28 May 2010 President Jean-Paul Costa went to Middelburg, the Netherlands, where he received on the Court's behalf the International Franklin D. Roosevelt Four Freedoms Award in the presence of Her Majesty Queen Beatrix of the Netherlands and His Royal Highness Prince Willem-Alexander of the Netherlands. The award was presented by Prime Minister Jan Peter Balkenende, an extract from whose speech follows:

'I am proud and honoured to present this year's International Four Freedoms Award to the European Court of Human Rights.

'Sixty years ago, in the wake of the most devastating war in human history, the nations of Europe came together in Rome to draft the European Convention on Human Rights. They were inspired by Franklin Roosevelt's vision. In the dark days of 1941, he had called for a post-war world founded on four fundamental

human freedoms: freedom of speech and expression, freedom of worship, freedom from want and freedom from fear. They also built on the pioneering work of Eleanor Roosevelt and René Cassin in drafting the Universal Declaration of Human Rights. Above all, they understood that the European Convention on Human Rights would need a mechanism to enforce it and uphold its principles. And so, nine years later, the European Court of Human Rights was established.

'Since that historic day, a little over 50 years ago, this unique body has played a central role in strengthening democracy and the rule of law. The Court guarantees all Europeans the right to life, to a fair hearing, to freedom of thought, conscience and religion, to the protection of their privacy and property, and to the free expression of ideas. Its binding judgments have led governments across Europe to change their laws and amend their Constitutions. In this way the Court has set an example of international cooperation that is an inspiration to the world.

'Over the last 50 years, the European Court of Human Rights has ruled on thousands of cases. It has ensured access to justice for every person in our vast and ancient continent. It has brought security and stability to our society. It has fully earned the respect and support of the member States of the Council of Europe. And even more important, the people of Europe have found the Court to be a fair and powerful instrument of justice on their behalf. Today, we gather to celebrate this great achievement. Because, as Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, said at the Court's 50th anniversary celebration: "The story of the European Court of Human Rights is undoubtedly a success story."

'President Costa, you recently said that human rights require a permanent battle, because they can never be taken for granted. "It is my belief", you said, "that the European human rights protection system, as it was first set up and has been enhanced by 50 years of case-law, has all the necessary characteristics to guarantee it a promising future." We all share that belief. Therefore I am presenting this award to you, not only to express our deep appreciation for the Court's service to democracy and freedom in the past, but also on behalf of future generations.'

In the course of his reply, President Costa said: 'It is only right that I begin my remarks with words of gratitude for the Roosevelt Foundation. In conferring the International Four

Freedoms Award on the European Court of Human Rights, the Roosevelt Foundation has bestowed a high honour on the Court. In its name I thank you most sincerely. It is a privilege indeed to be associated with the memory and legacy of the great Franklin Delano Roosevelt, as well as of Eleanor Roosevelt, a key actor in the elaboration of one of the fundamental texts of the modern age – the Universal Declaration of Human Rights ...

'As any human institution, the European Court of Human Rights has grown and developed. Each decade brought some measure of reform to the Convention, extending it and improving it. This process continues – it is part of the life of a living institution. But we have to keep in mind our permanent aim: protect men and women, guarantee human rights.

'The European context is a dynamic one. Our societies evolve, advance and diversify, and in so doing face new possibilities and challenges, new risks and uncertainties. Being directly open to individuals and civil society, the European Court has been confronted with many of the human rights questions of the present day, in the 21st century. What is the meaning of human dignity in the 21st century? How shall States balance national security and public safety against individual liberty? What recognition and what protection is due to the vulnerable, to the marginalized? These questions are with us, and the answers given define the character of the societies in which we live.

'The award today recognizes all that has been achieved since the creation of the Court. It is a tribute to the very many women and men, from many walks of life and all corners of Europe, who have contributed to its accomplishments. I will make special mention of President René Cassin, a great figure in the history of human rights, and firm ally of Eleanor Roosevelt. And, in the presence of Her Majesty and so many leading figures of Dutch society, it is appropriate to pay tribute to the consistently distinguished representation of the Netherlands on the Court, including a President of the Court, Gerard Wiarda, and this country's unwavering support for the Strasbourg system.

'I believe, and am confirmed in my belief by the Four Freedoms Award, that the European Convention on Human Rights will remain a strong pillar of European construction. And the accession of the European Union to the Convention, which is provided for by the Lisbon Treaty, will be an important mark of maturity for the process of European legal integration.'



From left to right: Jan Peter Balkenende, Prime Minister of the Netherlands, President Jean-Paul Costa and Mrs Franklin D. Roosevelt Jr.