section 1

The History of the Court

CHAPTER 1

The Birth of the European Convention on Human Rights

The European Court of Human Rights is an unusual court in many respects. With a jurisdiction that stretches from Reykjavik in the North Atlantic to Vladivostok on the Pacific coast of the Russian Federation, it is the linchpin for the protection of human rights in the 47 member States of the Council of Europe, encompassing more than [800] million inhabitants. First established in 1959, it became the model for other regional human rights courts: the Inter-American Court of Human Rights established in 1979 and the African Court on Human and Peoples' Rights established in 2006. Indeed, despite its regional jurisdiction, it is arguably the most influential of any international court: certainly when measured in terms of its impact on the daily lives of nearly a sixth of the world's population, it is a far more important body than either the International Court of Justice or even the International Criminal Court.

Eric Metcalfe*
Human Rights Policy Director at JUSTICE

Previous pages: *Hearing before the Court in* Ireland v. the United Kingdom *(1977).*

Left: *Commemorative plaque erected in the Council of Europe pavilion at the Brussels exhibition (September 1958): 'The Republic of Austria and the Republic of Iceland accepted, in this pavilion, the binding jurisdiction of the Court of Human Rights, thereby opening the way for the establishment of this new court emblematic of a free Europe.'*

Historical Context and Drafting of the Original Convention

The horrors and atrocities of the Second World War led to a flurry of activities, all of which had the aim of

Opposite: *On 7 May 1948 Senator Pieter Adriaan Kerstens, Vice-President of the European League for Economic Cooperation and Chairman of the Dutch Committee for a United Europe, gives the inaugural address at the Congress of Europe in The Hague in the presence, in particular, of Willem Adriaan Johan Visser, Mayor of the City of The Hague (far left), Princess Juliana of the Netherlands, her husband Prince Bernhard and Winston Churchill, former British Prime Minister, under whose honorary chairmanship the Congress was placed.*

Inauguration of the exhibition of the original documents of the Statute of the Council of Europe and the European Convention on Human Rights, on the occasion of the 60th anniversary of the Council of Europe (2009). Maud de Boer-Buquicchio, Acting Secretary General of the Council of Europe, and Lluís Maria de Puig, President of the Parliamentary Assembly.

Although the American Convention on Human Rights and the Inter-American Court of Human Rights came later, of course, when we look at the European and Inter-American regional systems as a whole, we can see a history that has in fact been parallel, and in important ways intertwined, since the adoption of the American Declaration in 1948 …

The historical influences have, not surprisingly, flowed primarily from Europe to the west, from Europe and across the Atlantic. Some of the most evident ones have had to do with the structural aspects of the Inter-American human rights system. For instance, the Inter-American Commission – although originally established by resolution of the General Assembly of the Organization of American States and not by treaty – was consciously inspired by and modelled after the now-defunct European Commission, even if in the subsequent years it evolved to acquire its own distinctive mandates and methods. Similarly, in the drafting of the American Convention on Human Rights in 1967, the Inter-American Juridical Committee fashioned their proposed structures and procedures for the Inter-American institutions in large part on the model of the American Convention's elder sister in Europe …

I would like to recall that all of the interactions and fruitful borrowings and cross-fertilizations that have taken place between the regional systems have not been the result merely of formal rules and practices or bureaucratic mechanisms. Their vitality has come from human relations and encounters. Reviewing the history of the Inter-American Commission and Court and their relationship to Europe, one cannot help but be struck by Cassin, Buergenthal, and many others, whose personal presence, commitments, and openness generated rich interchange and consequent growth on both sides of the Atlantic. The links between people have generated the links between institutions.

Paolo Carozza*
President of the Inter-American Commission on Human Rights, 2008–9

preventing any recurrence of such events, both by a system of protection of basic human rights and by closer political union between States.

At the outset came the Universal Declaration of Human Rights, elaborated within the United Nations and adopted by the United Nations General Assembly in 1948. It was, however, many years before even a limited list of the basic rights contained therein acquired binding legal force and a control mechanism, through the elaboration of the International Covenants on Civil and Political Rights and on Social, Economic and Cultural Rights. The difficulties encountered in drafting these instruments, however, raised the question in Europe – finally answered in the affirmative – whether a regional protection system would not be more effective.

A major initiative in this connection was taken by the European Movement at the Congress of Europe, held in The Hague in May 1948, when a number of proposals were submitted relating to the creation of a court with powers to control respect by States of human rights and fundamental freedoms. These ideas were pursued by the European Movement at the Congress of Brussels in February 1949, following which a committee of the Movement prepared a first draft of a European Convention on Human Rights. This draft provided for a guarantee of some ten rights and freedoms and created a court that, after filtering by a commission, would annul decisions and measures found to be manifestly incompatible with the principle of those rights.

While the debates within the European Movement were taking place, the governments of western European States were engaged in diplomatic activity, seeking to reinforce inter-State cooperation, to promote reconciliation between peoples and nations and to protect the individual from the threat of dictatorship and oppression. This activity was crowned at a diplomatic conference in London when, on 5 May 1949, the Statute of the Council of Europe was signed by ten States. That Statute declares 'the safeguard and development of human rights and fundamental freedoms' to be one of the Council's aims.

The European Movement's draft was submitted in June 1949 to the Committee of Ministers, and then to the Consultative Assembly (hereinafter referred to as the Parliamentary Assembly) of the Council of Europe. The Assembly held its first session in Strasbourg from 10 August to 8 September 1949. There was considerable opposition on the part of States to the inclusion on the Assembly's agenda of the item 'safeguard and development of human rights and fundamental freedoms' on the grounds that this was a matter already being dealt with by the United Nations. Nevertheless, the item was debated and, after a presentation of the European Movement's draft, was sent back to the Assembly's Legal Committee.

The Legal Committee began by listing the rights to be included in the convention, drawing for this purpose on the Universal Declaration. It also foresaw a 'collective guarantee' mechanism involving procedures of inter-State and individual complaints to be adjudicated by a court and also a commission with powers of investigation and conciliation. Within the Committee objection was raised to

The European Court of Human Rights is surely one of the busiest and most exemplary of international judicial bodies. It exerts a profound influence on the laws and social realities of its member States and has become the paradigm for other regional human rights courts, not to mention other international judicial bodies in general. It is a Court that continually renews itself, adjusting its procedures to maximize efficiency and to address the considerable operational problems that face it. From our seat in The Hague, the judges of the International Court of Justice admire all that you have achieved, and we will continue to follow your work with the greatest interest, constantly looking for ways in which we can be partners in protecting human rights.

Dame Rosalyn Higgins*
President of the International Court of Justice, 2006–9

Dame Rosalyn Higgins speaking at the opening of the Court's 2009 judicial year.

There is scarcely a proceeding before the [International Criminal] Tribunal [for the former Yugoslavia] in which the Court's jurisprudence is not cited. A measure of the status and influence of the Court is that its cases are often cited as though they are binding on the Tribunal, when, in fact, they are only of persuasive authority.

Patrick Robinson*
President of the International Criminal Tribunal for the former Yugoslavia

In 2009 Presidents Carozza (left) and Robinson took part in the traditional seminar 'Dialogue between Judges' on the occasion of the opening of the Court's judicial year.

President Skouris at the Court's annual seminar in 2009.

Our two Courts have grown up together and been nourished by the same spirit of unification and peace that was behind the idea of Europe right from the outset. It is barely noticeable today that the Court of Justice, 'Europe's elder daughter', was the first to advocate that spirit, so great is the unceasingly renewed interest it takes in your Court and its case-law. We can therefore only hope that the two Courts will continue to pursue and foster this dialogue in order to build together this edifice of justice so dear to the founders of Europe …

I can therefore say, with unfeigned joy, that the European Convention on Human Rights has been, and remains, the beacon that guides our institutions in their mission of human rights protection. This has partly been achieved as a result of the remarkable work done by the institutions set up to interpret and ensure compliance with the Convention. I would like to add here that respect for the teachings that emerge from the text of the Convention as interpreted by your Court has always been a leitmotiv for the Court of Justice when giving rulings in cases raising questions relating to the protection of fundamental rights …

The leitmotiv that I have just mentioned has manifested itself in the case-law of the Court of Justice in the form of a famous and now well-known statement. It has said, and I quote, that:

> *Fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the member States and from the guidelines supplied by international treaties for the protection of human rights on which the member States have collaborated or to which they are signatories. In that regard, the European Convention on Human Rights has special significance.*

Vassilios Skouris*

President of the Court of Justice of the European Union

the proposal to establish a court, but this view did not win the day, and on the last day of the Assembly's session the Committee's draft was adopted and then, on 5 November 1949, submitted to the Committee of Ministers.

Notwithstanding objections on the part of the Assembly, the Committee of Ministers decided to refer the draft to a committee of experts for examination in its entirety. The experts (some of whom were subsequently among the first members of the Commission or judges of the Court) met in February and March 1950. Although there was agreement that a convention should be prepared, there was disagreement as to how the guaranteed rights should be formulated, some preferring a simple list and others a precise definition of the rights and their possible limitations. They therefore prepared alternative drafts for the Committee of Ministers on this point and, in addition, reached no conclusion about whether a court should be created, considering this to be a matter that required a political decision.

With the ball once again in its court, the Committee of Ministers decided to refer the whole question to a conference of senior officials, which met in June 1950. Once again, opinions were divided. France, Italy, Belgium and Ireland were in favour of the creation of a court, while the Netherlands, the United Kingdom, Norway, Sweden, Greece and Turkey were against the proposal. There was also no agreement on the precise role of the commission proposed by the Assembly. There were also questions about whether the Committee of Ministers was an appropriate body to be entrusted with powers of decision regarding

alleged violations of human rights, an essentially judicial function. Ultimately, the conference did manage to produce a single draft, based on the majority view on each of the points in dispute. In particular, the compromise reached over the proposed creation of a court was that this should be optional – that is, States would be free to choose whether or not to accept its jurisdiction.

The work of the conference was examined by the Committee of Ministers at the beginning of August 1950, after it had consulted the Assembly's Legal Committee. Yet another reference to a committee of experts was proposed, but on 7 August the Committee of Ministers decided to adopt the draft with a number of modifications and to transmit it to the Assembly for its opinion. It was at this stage that a further compromise was introduced: the right of petition, whereby an individual could allege a violation of the guaranteed rights, should also be optional in that such petitions could be submitted to the proposed commission only against States that had accepted this possibility.

On 25 August the Assembly, while regretting the various modifications that had been made to the original project, gave its unanimous favourable opinion to the draft. This

From 25 to 28 February 1949, in Brussels, the International Committee of the Movements for European Unity holds its inaugural session, during which European activists call, in particular, for the adoption of a Charter of Human Rights and propose the creation of a Court of Justice to examine allegations of violation of the Charter. In the centre, Winston Churchill, former British Prime Minister (seated to the right), and Paul-Henri Spaak, Belgian Prime Minister (seated to the left).

French Foreign Minister Robert Schuman signs the Convention in Rome on 4 November 1950.

On 4 November 1950 Robert Schuman, that great European whom we lost a few days ago, said:

> *This Convention which we are signing is not as full or as precise as many of us would have wished. However, we have thought it our duty to subscribe to it as it stands. It provides foundations on which to base the defence of human personality against all tyrannies and against all forms of totalitarianism.*

Lodovico Benvenuti*
Secretary General of the Council of Europe (1957–64)

opinion was accompanied by a number of proposals for amendment, notably concerning guarantees of certain rights that had been omitted from the draft of the conference of senior officials.

In order not to delay matters further, the Committee of Ministers decided to refer the Assembly's proposals for amendment back to a committee of experts and that the text of the Convention, as adopted by the Committee of Ministers on 7 August, should be opened for signature. Thus it was that, on 4 November 1950 in Rome, and shortly afterwards in Paris, the Convention for the Protection of Human Rights and Fundamental Freedoms was signed by all the member States of the Council of Europe, and for this reason in the early days the Convention was also referred to as the Treaty of Rome. The Convention came into effect on 3 September 1953, consequent on its ratification by Luxembourg, the tenth State to do so.

Subsequent Amendments

The original Convention guaranteed the right to life; the prohibition of torture or inhuman or degrading treatment or punishment; the prohibition of slavery and forced labour; the right to liberty and security; the right to a fair trial; no punishment without law; the right to respect for private and family life; freedom of thought, conscience or religion; freedom of expression; freedom of assembly and association; the right to marry; the right to an effective remedy; and the prohibition of discrimination.

Hardly had the Convention been signed than negotiations opened again, this time concerning those rights that had been the object of the most energetic debates in the Parliamentary Assembly and had been omitted from the original text – that is, the right of property, freedom of education and the right to free elections. Another committee of experts was set up to draft an additional Protocol to the Convention on these items. It encountered special difficulty with the article on the right of property and the question of indemnity for expropriation. However, a text was approved by the Committee of Ministers in August 1951 and signed, after consultation of the Assembly, by all the member States of the Council of Europe on 20 March 1952.

Thereafter, and at intervals over the years, further Protocols were elaborated providing for the guarantee of additional rights. They were:

- *Protocol No. 4 (1963) relating to the prohibition of imprisonment for debt, freedom of movement, the prohibition of expulsion of nationals and the prohibition of collective expulsion of aliens.*
- *Protocol No. 6 (1983) concerning the abolition of the death penalty.*
- *Protocol No. 7 (1984) on procedural safeguards relating to the expulsion of aliens, the right of appeal in criminal matters, compensation for wrongful conviction, the right not to be tried or punished twice and equality between spouses.*

- *Protocol No. 12 (2000) providing for a general prohibition on discrimination (discrimination already being prohibited in certain respects by the Convention itself).*
- *Protocol No. 13 (2002) concerning the abolition of the death penalty in all circumstances.*

These Protocols securing additional rights are known as 'optional Protocols' in that States Parties to the original Convention can choose whether to become party to all or any of them. Thus, the circle of States bound by one of the Protocols may well be different from the circle of States bound by another.

Over the years a number of Protocols (Nos. 3, 5, 8–11, 14 and 14 *bis*) were drawn up to modify certain aspects of the procedure before the Strasbourg institutions as laid down in the original Convention. These Protocols were, in general, known as 'amending Protocols' – that is, they had to be ratified by all States Parties to the Convention before entering into effect. The result of this was that many years often elapsed before the modifications came into effect. An exception to the general rule was Protocol No. 9, concerning the right of an individual applicant to bring their own case before the Court. Although this Protocol modified the procedure rather than secured additional substantive rights, it entered into effect after ten ratifications. Of these various instruments, Protocol No. 11 was of particular importance in that it instituted a single permanent court with compulsory jurisdiction (see Chapter 3, which also deals with the most recent Protocols, Nos. 14 and 14 *bis*).

Finally, Protocol No. 2, dating from 1963, conferred on the Court the competence to give advisory opinions on certain limited conditions.

Protocol No. 6 was the first legally binding instrument in Europe – and in the world – to provide for the abolition of the death penalty in time of peace. It has now been ratified by all member States, except for the Russian Federation which has a moratorium on executions. (Cartoon by Nicolas Herrmann.)

The Nature of the Convention

Reading the list of rights set out in the original Convention reveals nothing startling – it contains what would commonly be considered to be basic human rights. The particular innovation of the Convention (and this remained for some time a unique example) was that it set up machinery for the collective enforcement of the guarantees it contained. Either one State could bring a case alleging a violation by another State of one of the rights or (and herein lay the even greater innovation) an individual could file a petition claiming that they had been the victim of such a violation. Although the authors of the Convention may have attached particular weight to the first of these alternatives, the number of inter-State cases has, no doubt for political reasons, proved to be small. It is individual petitions that have provided the backbone for the activities of the Strasbourg institutions, underlain the development of their extensive case-law and been at the origin of their success.

Compiling the list of rights to be guaranteed by the Convention proved to be a relatively easy task – the list was, after all, drawn from the Universal Declaration – but the same cannot be said of the setting up of the machinery constituted by the Commission and the Court. There was considerable opposition from those who saw the creation of these bodies as neither necessary nor desirable, and this is evidenced by the proceedings of the government experts, who concluded, by way of compromise, that the right of individual petition and the jurisdiction of the Court were to be subject to optional declarations. These early difficulties were – and are still – followed by a snail-like progress in adding further rights to be guaranteed or in modifying procedures by means of Protocols to the Convention.

The Convention was opened for signature on 4 November 1950 at the Barberini Palace in Rome.

Ratification of the Convention as a Precondition of Membership of the Council of Europe

Despite the many parallels between the objectives of the Council of Europe as enshrined in its Statute and the rights and freedoms guaranteed by the Convention, the Statute does not specifically provide that ratification of the Convention is a condition for membership of the Council. Nonetheless, the practice has evolved over time. Initially, the Parliamentary Assembly, in its opinions given to the Committee of Ministers, and then, from 1977, the Committee itself referred to the intention of the candidate State to sign the Convention (to which was later added the intention to accept the right of individual petition and the compulsory jurisdiction of the Court). At the close of these developments, while it could still not be said that a State could not join the Council until it had ratified the Convention, it was clear that no State would be admitted if it had not undertaken to ratify in a reasonable time.

Foreign Ministers in Rome on 4 November 1950. From left to right: Carlo Sforza (Italy), Robert Schuman (France) and Walter Hallstein (Germany).

The Human Rights Convention signed at Rome was designed by the 15 member States to be the principal bulwark for safeguarding their common heritage of political traditions, of ideals, of freedom and of respect for the rule of law. The Convention is at once the highest achievement of the Council of Europe to date and a new landmark in the development of the status of the individual in international law …

I propose to sketch for you a broad picture of the Convention as a European Bill of Rights – a Bill of Rights for free Europe. It is that aspect of the Convention that is supremely important. The Statute of the Council, as you know, set up no supranational organ and left a closer European unity to be won by further agreements between member States. The Rome Convention was hailed as a great achievement precisely because it did set up special European organs of a supranational kind. But the very word 'Convention' serves as a warning that our Bill of Rights may have the features more of European international than European constitutional law.

The Rome Convention was supplemented by a Protocol that added three further rights and freedoms, and it is these two instruments together which form the European Bill of Rights. They do not cover all the rights and freedoms mentioned in the United Nations Declaration of Human Rights. But, unlike the Declaration, they are hard, enforceable law …

The [Convention and the Protocol] provide a constitutional code of human rights capable of detailed application by both international and municipal tribunals. Each right and freedom is defined with some precision, and at the same time the exceptions and restrictions to which, in the common interest, they must be subject in any civilized democracy are carefully formulated …

Now, let us look a little more closely at the Bill of Rights from a constitutional point of view. Very interesting, it seems to me, is the status of the Convention and Protocol within the legal systems of member States. In six countries these instruments do not have the force of law, namely, in the four Scandinavian countries, in the United Kingdom and in the Republic of Ireland. In those countries the Constitution does not give treaties the force of law nor has any special law been promulgated to give the Convention and Protocol the force of law. The courts of these countries, therefore, are not competent to give effect to the European Bill of Rights as such. In them the rights and freedoms of the individual derive from the local law alone, and the most that the courts can do is to take inspiration from the European Bill of Rights in dealing with doubtful points in the domestic system …

The legal systems of eight countries, however, do give the Convention and Protocol the force of law. In the Benelux countries, in Germany, Italy, Turkey and Greece, after receiving parliamentary approval and being promulgated, the two instruments did acquire the character of statute law applicable in the domestic courts. In Austria, the latest adherent to the European Bill of Rights, the position is even more striking, for there the Convention and Protocol have been made part of the fundamental law of the Constitution …

Whether or not it makes the European Bill of Rights part of its domestic law, every member State is now under an international obligation to ensure that its laws are in conformity with the Bill of Rights and, if necessary, to amend them so as to produce that situation. No government can excuse a violation of the Convention by saying to the Commission, 'We could not help ourselves because it is our law' …

So much for the declaration of our rights and freedoms: Dicey, the classical authority on the rule of law, used to say that what matters is not formal declarations of rights but legal remedies. Within the Council of Europe human rights and freedoms find in the great majority of cases their full protection in each State's own system of law and remedies. The special international remedies of the Convention are merely superimposed on the State system of remedies as a final guarantee of protection. That the international remedies are to be employed very exceptionally and as a last resort is made very plain by Article 26: 'The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within six months of the date on which the final decision was taken.'

Sir Humphrey Waldock*
President of the Court, 1971–4
President of the Commission, 1955–62

Influence of the Convention beyond the Council of Europe

The Convention provides that it shall be open to the signature of the 'Members of the Council of Europe'. In the absence of a clause permitting accession by other States, it is thus what is known as a 'closed' Convention. It has from time to time been suggested – for example by the Parliamentary Assembly or as regards former colonial territories that had achieved independence – that the Convention be opened to other States, even non-European, but these proposals have never been accepted.

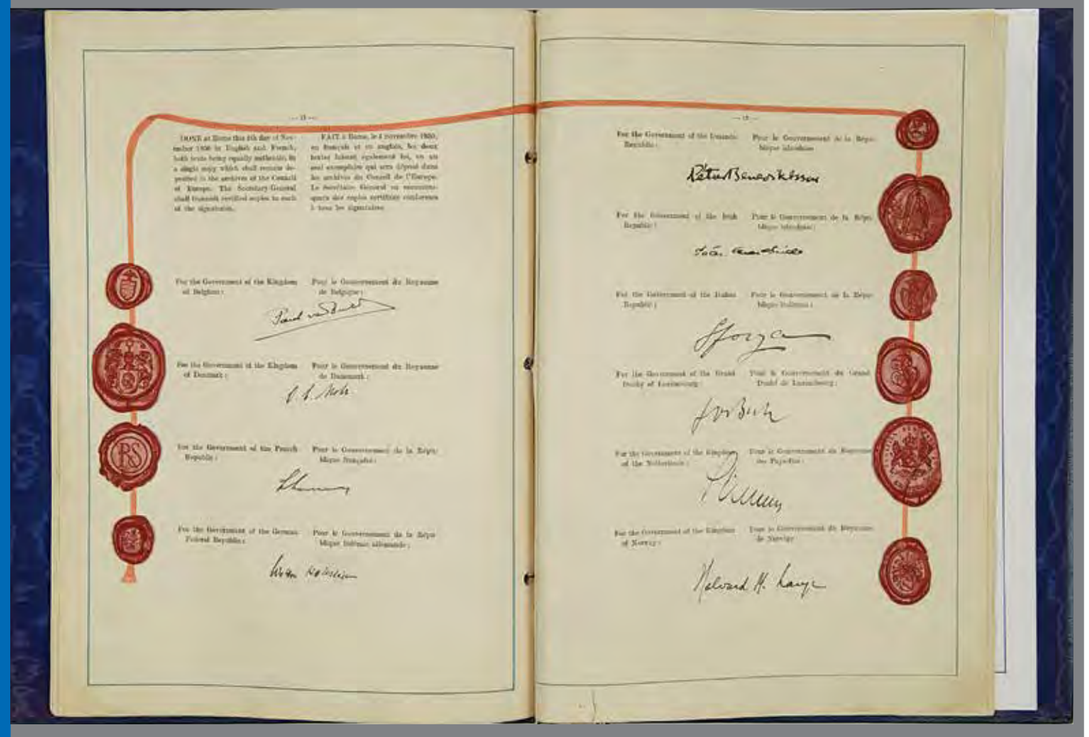
Nevertheless, the influence of the Convention has in practice by no means been limited to this closed circle, as is shown by various extracts and contributions elsewhere in this book.

Jonathan L. Sharpe
General Editor

These pages, yellowed with age, have brought about an unprecedented, almost revolutionary, change in attitude between individual States – and between individuals and the State – in Europe.

Maud de Boer-Buquicchio*
Deputy Secretary General of the Council of Europe
Deputy Registrar of the Court, 1998–2002

***Below**: Pages bearing the signatures to the European Convention on Human Rights.*



THE COURT'S FIRST JUDGMENT ON THE MERITS: *LAWLESS v. IRELAND* (1961)

The Court's very first judgment on the merits of a case dealt with a subject-matter which remains topical to this day, namely whether a Contracting State, referring to a perceived public emergency threatening the life of the nation, may legitimately derogate from some of the rights and freedoms it has undertaken to secure to everyone within its jurisdiction. The following are excerpts from the press release at the time:

'1. On 1 July 1961, the Chamber of the European Court of Human Rights called upon to examine the *Lawless* case, rendered, under the Chairmanship of Mr René Cassin, Honorary President of the French *Conseil d'Etat*, its judgment of the merits of the case.

2. The case ... concerns Gerard R. Lawless, an Irish national, who ... alleged that there had been a violation of the Convention in his case by the authorities of the Republic of Ireland, inasmuch as he had been detained without trial between 13 July and 11 December 1957, in pursuance of the Offences against the State (Amendment) Act 1940. Lawless was suspected of being involved in the activities of the Irish Republican Army (IRA), an armed organization declared unlawful in the Republic of Ireland ...

5. When the case was brought up, several preliminary objections and questions of procedure were raised by the Irish government as also by the Commission. The Court gave its ruling on these questions in its judgment of 14 November 1960 ...

8. In its judgment of 1 July 1961 the Court ruled unanimously:
(a) that, by the terms of Article 17, no person should be able to avail himself of the provisions of the Convention in order to commit acts aimed at the subversion of the rights and liberties recognized in the Convention, but that this provision, which has a negative aspect, cannot deprive G.R. Lawless – who did not avail himself of the Convention to justify or carry out acts contrary to the rights and liberties recognized in the Convention – of his fundamental rights guaranteed in Articles 5 and 6;

(b) that Lawless' detention without appearing before a judge from 13 July to 11 December 1957 ... was not in conformity with the provisions of Article 5 §§ 1 (c) and 3 of the Convention. By the terms of these provisions, any person about whom it can be "reasonably considered necessary to prevent his committing an offence" can only be arrested or detained "for the purpose of bringing him before the competent legal authority"; once arrested or detained, this person "shall be brought promptly before a judge ... and shall be entitled to a trial within a reasonable time."

(c) that there has been no violation of Article 7 of the Convention, forbidding the retroactivity of penalties. The detention of G.R. Lawless cannot be considered as resulting from a judgment in the meaning of the provision in question.

(d) — that the Irish government was justified in declaring that a state of emergency endangering the life of the nation existed in the Irish Republic during the period of detention of Lawless.
— that the detention without appearing before a judge ... appeared to be a measure strictly limited to the exigencies of the situation, in the sense of Article 15 § 1 of the Convention.
— that this measure was not, otherwise, a breach of the other obligations of the Irish government under international law, and in conclusion that the detention of G.R. Lawless from 13 July to 11 December 1957 was justified by the right of derogation exercised by the Irish government in July 1957, in accordance with Article 15 of the Convention;

(e) that the communication sent by the Irish government to the Secretary General of the Council of Europe on 20 July 1957, concerning the measures it had taken, constituted adequate notification under the terms of Article 15 § 3 of the Convention.

9. The Court ruled, therefore, that the evidence did not reveal a violation by the Irish government of the provisions of the European Convention on Human Rights and that consequently the question of awarding damages to G.R. Lawless did not arise.'

President René Cassin, accompanied by Registrar Polys Modinos, reads out the Lawless v. Ireland *judgment.*

GIVING FORCE TO WHAT IS JUST: COMMISSION INAUGURATION CEREMONY*

The Commission met for the first time on 12 July 1954 at Strasbourg. At the inaugural meeting, which was held in the Committee of Ministers' meeting room especially arranged for the occasion, the chair was taken by Léon Marchal, Secretary General of the Council of Europe. The speech he made on this occasion in French was delivered in English by Anthony Lincoln, Deputy Secretary General. Messages were received from the Committee of Ministers and from the Standing Committee of the Consultative Assembly, that from the Standing Committee being read by the Head of the Commission Secretariat, Polys Modinos.

Message from the Chairman of the Committee of Ministers

The following telegram was received from Dr Adenauer, Chancellor of the Federal Republic of Germany and present Chairman of the Committee of Ministers: 'On the occasion of its inaugural session I convey to the European Commission of Human Rights the best wishes of the Committee of Ministers of the Council of Europe for the successful accomplishment of its work. Signed: Adenauer, Federal Chancellor and Chairman of the Committee of Ministers.'

Message from the Standing Committee of the Consultative Assembly

'The drafting of a European Convention for the protection of human rights and fundamental freedoms formed one of the first tasks which, immediately following its foundation, was undertaken by the Consultative Assembly of the Council of Europe. It is a task to which it has at all times attached the greatest value.

'For this reason the Standing Committee, acting on behalf of the plenary Assembly, hails with both satisfaction and pride the inauguration of the European Commission of Human Rights ...

'Already at this moment the creation of the European Commission of Human Rights marks an important stage in the triumphal progress of respect for the human person. The Commission will be the supreme guardian of freedoms rightly styled fundamental, for, in their absence, there can be no human personality worthy of the name.

'The Standing Committee, considering the long legal or judicial experience of certain members of the Commission; the special competence in matters of human rights of others; the known probity, the capacity both for magnanimity and for firmness, for weighing and measuring the question before them, of all; states its conviction that the European Commission of Human Rights will carry out with outstanding success the mission of European civilization entrusted to it.'

Inaugural speech by Léon Marchal, Secretary General of the Council of Europe

'I need not expound to you the reasons which led the Consultative Assembly and the Committee of Ministers of the Council of Europe to accept the preparation of a Convention on Human Rights as one of the primary tasks of the newly created Organization.

'On 10 December 1948, the General Assembly of the United Nations promulgated the Universal Declaration of H uman Rights. Thereafter, some might have questioned the usefulness of a new Convention limited to a re-affirmation of certain rights already written into the Universal Declaration. Others might have entertained the same doubts over the practical worth of an agreement to which only democratic States, where these very rights and liberties were already upheld by internal law, would be parties.

'Sir David Maxwell-Fyfe, when he was Chairman of the Legal Committee of the Assembly, replied to their doubts: "The creation," he said, "and working of the machinery for the agreement and enforcement of human rights will be an effective method of promoting integration in Europe by means of functional cooperation."

'On the one hand was the need to proclaim that the principles of democracy and the freedom of the individual were the very foundation of the European edifice. On the other, was the need to be sure that the future would witness no perilous relapse into regimes which are alien to us. "Barbarism is not behind us but underneath," said Sir David. Mr Teitgen quoted Montesquieu's words: "Whoever holds power is tempted to abuse it" (*Quiconque a du pouvoir est tenté d'en abuser*). He saw in the Convention a defence against the threat implicit in the undying excuse *raison d'état*. Lord Layton recalled the saying that the price of freedom is constant vigilance ...

One of the first Commission meetings in 1954. From left to right: Geneviève Janssen-Pevtschin, President Paul Faber and Anthony B. McNulty from the Secretariat.

Commission deliberations in the 1960s. From left to right: Frede Castberg, Adolf Süsterhenn and President Sture Petrén.

'The Council of Europe, then, did not content itself with a simple statement of principle, however weighty. It chose to guarantee collectively, as between member countries, the rights and freedoms of the individual and, furthermore, collectively to protect them by creating institutions charged with ensuring their observance should the need arise.

'In so doing, the Council wished to affirm that the goal of the community of nations cannot be other than the fulfilment of the human personality in peace and through the cooperation of States.

'Thus the protection of human rights appears among those "causae" – to borrow a term from Roman Law – which combine to form the basic stuff of our European organism. The Convention itself, too, is perhaps the most momentous outcome, hitherto, of the deliberations of the Council ...

'The Consultative Assembly has, from the first, considered it essential for the protection of human rights that any person claiming to be the victim of a violation, by one of the High Contracting Parties, of his rights should be able to submit his complaint to an international organ direct, for the purpose of investigation and conciliation, without having to seek the support of a government, whose intervention would have the effect of transforming the complaint of an individual into a dispute between States. It was this consideration which led to the institution of the European Commission of Human Rights. The Assembly strongly urges the States which have not yet done so to take the step envisaged in Article 25 of the Convention and recognize the competence of the Commission to hear individual petitions.

'Ladies and Gentlemen, it behoves member governments to examine that recommendation of the Assembly with the close attention it merits.

'Were the right of private persons to have recourse to your Commission over the matters and in the manner contemplated by the Convention, recognized; and were, as a natural and logical consequence, the European Court of Justice to be set up; then the edifice would stand completed: then would there be proof that European countries had relinquished sovereignty not in vain but in order to reaffirm their faith in their common destiny ...

'That member countries of the Council believe profoundly in those fundamental freedoms which (I quote from the Preamble to the Convention) are the foundation of peace and justice in the world, could receive no better illustration, Ladies and Gentlemen, than your presence at the Seat of the Council.

'It was surely Pascal who wrote of his own times: "Not being able to ensure that what was just would have force, one made what was forceful just" (*Ne pouvant faire que ce qui est juste fût fort, on a fait que ce qui est fort fût juste*).

'May the member countries of the Council, sharing a patrimony compounded of idealism and political traditions, of respect for freedom and for the rule of law, deserve one day to have said of them: "They succeeded in giving force to what was just" (*Ils ont pu faire que ce qui est juste fût fort*).'