CHAPTER 2

The Situation before 1 November 1998

The Institutions

Substantial changes to the machinery set up by the Convention were made by Protocol No. 11, which came into effect on 1 November 1998. Before that date, the following three institutions were responsible for enforcing the obligations undertaken by States that had ratified the Convention.

The European Commission of Human Rights

The Commission was composed of a number of members equal to the number of States that had ratified the Convention, with no two members being nationals of the same State. It was not until Protocol No. 8 came into force in 1990 that a phrase was added concerning the qualifications required of Commissioners – that is, that they be 'of high moral character' and 'either possess the qualifications required for appointment to high judicial office or be persons of recognized competence in national or international law'. From the outset it was, however, specified that members of the Commission sat on the Commission in their individual capacity to emphasize their independence of the States of which they were nationals.

The members of the Commission were elected by the Committee of Ministers of the Council of Europe from a list of names drawn up by the Bureau of the Parliamentary Assembly. The basic rule was that members were elected for a term of six years and could be re-elected. The first election of Commissioners took place on 18 May 1954, after the Convention took effect on 3 September 1953 following the ratification of the Convention by Luxembourg, the tenth State to do so.

The Commission was assisted by a Secretariat that, according to the Convention, was to be provided by the Secretary General of the Council of Europe. Members of the Secretariat, who were members of the staff of the Council of Europe, were nominated by the Secretary General on the proposal of the Commission in the case of its Secretary and Deputy Secretary or with the approval of the President of the Commission or its Secretary acting on the President's instructions in the case of other staff.

Opposite: *In 1984 the Court heard a case brought by Mrs Abdulaziz, Mrs Cabales and Mrs Balkandali, who challenged the application in their respective cases of the United Kingdom Immigration Rules. The Court held that they had been victims of discrimination on the ground of sex in the enjoyment of their right to respect for family life.*

The European Court of Human Rights

The Convention originally provided that the Court was to be composed of a number of judges equal to that of the number of member States of the Council of Europe (irrespective of the size of the State), with no two judges being nationals of the same State. This is different from the Commission, in that the Court could include a judge in respect of a State that had not ratified the Convention. One reason given for this difference is that member States of the Council of Europe were bound to work for the objectives enshrined in its Statute (the rule of law, the protection of human rights) and were thus entitled to participate in the

Solemn installation of the Court on the occasion of the celebrations to mark the 10th anniversary of the Council of Europe, 20 April 1959.

Court's activities towards these ends, even though they were not parties to the Convention. The Convention also provided from the outset that judges should be 'of high moral character' and 'either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence'. Unlike the Commission, there was no express provision that judges sit in an individual capacity, no doubt because this was considered to be self-evident.

A judge did not – and still does not – have to be a national of the State in respect of which they were elected or even of a member State of the Council. For example, a Canadian sat for many years as judge in respect of Liechtenstein.

The members of the Court were elected by the Parliamentary Assembly of the Council of Europe from a list of persons nominated by its member States. The Convention originally laid down as a basic rule that judges were elected for a term of nine years and could be re-elected (this term was later reduced by Protocol No. 11 to six years, renewable). The first election of judges took place on 21 January 1959 after, as stipulated by the Convention, the number of States that had recognized the jurisdiction of the Court had, with the declarations of Austria and Iceland on 3 September 1958, reached a total of eight.

A notable feature (found also in the International Court of Justice) was that for the consideration of each case brought before it the Court always included the judge who was a national of the defendant State (and of the applicant State in inter-State cases) or an ad hoc judge nominated in their place by the State in question. While this provision might at first sight seem strange, experience has shown that this so-called 'national judge' plays an important role in explaining the factual and domestic-law background to the case.

The Court was assisted by a Registry (composed initially solely of a Registrar but growing gradually over the years to some 50 persons). Strangely, the Convention itself was silent on this point, but this can be explained by the fact that when the Convention was being drafted it was not known if, with the system of optional acceptance of the Court's jurisdiction, the Court would come into existence and what its role might be. It was only when Protocol No. 11 came into effect in 1998 that provisions were added to the Convention on this point. The current situation of the Registry and some of the difficulties that have arisen concerning its status are described elsewhere in this book.

> In our desire to guarantee and protect freedoms in Europe, the purpose is not to reduce the sovereignty of one State as compared to another State or to give pre-eminence to one State over another State. The purpose is to limit the sovereignty of the States from a legal point of view and from that point of view all limits are permissible.
>
> **Pierre-Henri Teitgen***
> *Judge at the Court, 1976–80*
> *Leading French politician, 1944–56*

The Committee of Ministers

The Committee of Ministers of the Council of Europe is composed of the foreign ministers of all the member States, who meet once a year. At other times, they meet at deputy level, being represented by the States' permanent representatives (ambassadors) to the Council. Save for the very first election of members of the Commission, all the functions of the Committee under the Convention were and are carried out by the deputies.

The itinerary followed by cases before, and role played by, the above three bodies is described below. The Secretary General of the Council of Europe is empowered to request any State Party to the Convention to furnish an explanation of the manner in which its law ensures the effective implementation of any of the provisions of the Convention. However, this power is exercised only occasionally.

The System

Optional Declarations

The debates surrounding the birth of the Convention gave rise to two compromises in the form of optional declarations. First, an individual petition could be received by the European Commission of Human Rights only if the State concerned had declared that it recognized the competence of the Commission to receive such petitions. No such limitation applied to an application introduced by a State. Second, a case could be brought before the Court only if the State or States concerned had declared that it or they recognized the jurisdiction of the Court as compulsory. In the early days, few States had made these optional declarations, but by the end of the 1980s all States Parties to the Convention had made both of them.

The Itinerary Followed by Cases

The original procedure for handling complaints entailed a preliminary examination by the Commission, which

Hans Danelius (left) states the Commission's view in a case being heard by the old Court.

determined their admissibility. The rules on admissibility may be summarized as follows.

The Commission could deal with the matter only after all domestic remedies had been exhausted and as long as the application was lodged within a period of six months from the date on which the final domestic decision was taken. The exhaustion of remedies rule reflects the general principle of international law that a State shall not be brought before an international instance until it has had the opportunity of putting right itself the matter complained of. The Commission could not deal with any complaint that:

- *was anonymous*
- *was substantially the same as one it or some other international body had already examined*
- *it considered incompatible with the provisions of the Convention, manifestly ill-founded or an abuse of the right of petition.*

Where an application was declared admissible, the Commission placed itself at the parties' disposal with a view

to reaching a friendly settlement on the basis of respect for human rights as defined in the Convention. If no settlement was forthcoming, the Commission drew up a report establishing the facts and expressing an opinion on the merits of the case. This report was transmitted to the Committee of Ministers of the Council of Europe.

As long as the State or States concerned had accepted the compulsory jurisdiction of the Court, the case could, within three months of the transmission of the Commission's report to the Committee of Ministers, be brought before the Court by the Commission, the State whose national was alleged to be a victim, the applicant State and/or the defendant State. The Court's judgment, given by a majority vote, was final and binding.

One of the curiosities of the Convention machinery as originally drafted was that the individual whose application initiated the proceedings in Strasbourg could not themselves refer the case to the Court and so appeared to have disappeared from the scene.

Over the years, however, the position of the individual applicant evolved. First, it was accepted that the Commission, in addition to its role as defender of the public interest, could be assisted in the Court proceedings by the applicant or their lawyer, thus ensuring that the applicant's arguments were put before the judges. Then, in 1983, an amendment to the Rules of Court gave the applicant the possibility of taking part directly in the proceedings before the Court. It was, however, not until the entry into force in 1994 of Protocol No. 9 to the Convention that the applicant became fully a party to the proceedings, with the power to refer the case to the Court, provided that it had been declared admissible. This Protocol was, however, optional and thus applied only to cases against States that had ratified it. Moreover, it was open to a screening panel of judges to decide that the case, if it raised no serious question, should not be examined by the Court. Protocol No. 9 was eventually repealed as part of the substantial changes made by Protocol No. 11, the individual having thereafter the full status of a party to the proceedings.

A point that gave rise to some controversy and criticism was that from the early days the Court held that it could give its own decision on the question whether an application was admissible (and notably whether domestic remedies had been exhausted). Some decisions of the Court declaring inadmissible cases that had been declared admissible by the Commission were not exactly popular with the Commission's members (see the contribution of Hans Christian Krüger, pages 42 et seq.) but, despite pleas to the contrary, the Court maintained its case-law on this point until the replacement of Court and Commission by a single body when Protocol No. 11 came into force.

The original Convention provided that, if the Commission failed to reach a friendly settlement and if the case was not referred to the Court, it was for the Committee of Ministers to decide, by a two-thirds majority, if there had been a breach of the Convention. This provision did not appear in early drafts of the Convention and was included only in August 1950. It was felt that a residual power of decision had to be

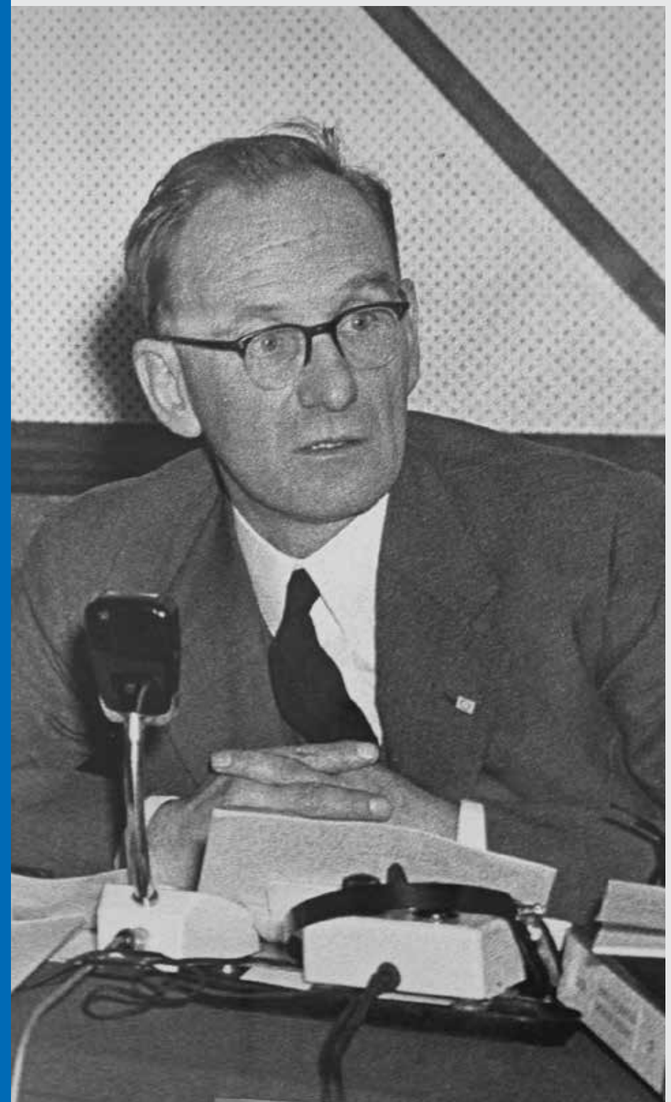
TYPES OF CASE

From the outset, there have been two types of contentious case under the Convention: inter-State and individual.

The existence of inter-State applications (which can be brought by one or more States Parties to the Convention against another State Party) reflects the intention of the authors that the Convention was to establish not reciprocal rights and obligations between States but rather a mechanism for the collective enforcement of the guaranteed rights. Thus, a State may introduce an application of this kind even though its own interests or those of its nationals are not affected by the alleged violation of the Convention.

Applications of this type have been rare – to date only about 20 – but prominent examples are the case brought by Ireland against the United Kingdom in the 1970s relating to security measures in Northern Ireland and several cases brought by Cyprus against Turkey over the situation in northern Cyprus. Two inter-State cases, *Georgia v. Russia* (nos. 1 and 2), are currently pending before the Court. The paucity of cases can no doubt be attributed to the mutual reluctance of States to bring each other's alleged misdeeds into the public arena. It may also be surmised that a number of these applications were launched not so much with a disinterested aim of protecting human rights as with an underlying political aim.

In practice, the overwhelming majority of cases dealt with in Strasbourg stem from individual applications. These can be introduced by any person, non-governmental organization or group of individuals claiming to be the victim of a violation by a State Party of the rights set forth in the Convention and its Protocols.



Sir Humphrey Waldock.

Some people feared that there would be a great flood of futile applications, which would drown the Commission. We have had this jurisdiction for about three years, and we have received almost exactly 400 applications from individuals. If that does not amount to a great flood, it is certainly a large number. Nevertheless, we have contrived without too much difficulty to avoid being submerged by the applications from individuals ...

One writer has jokingly observed that the procedure seems to be more designed for the protection of governments than of individuals, and the witticism has some element of truth in it. The experience of the past three years, however, has entirely justified our procedure. It has enabled the Commission to give serious attention to the more substantial cases and has prevented the individual's right of application from becoming a wholly unjustifiable burden on the administrative services of member governments. To date we have dealt with about 360 cases from individuals ...

The Convention was clearly right ... to make the Commission's task of conciliation the central feature of the remedies that it provides. Investigation of the shortcomings of a State in regard to human rights is a very delicate form of intervention in its internal affairs. The primary duty of the Commission is to conduct confidential negotiations with the parties and to try and set right unobtrusively any breach of human rights that may have occurred. It was not primarily established for the purpose of putting States in the dock and registering convictions against them. Of course, if no settlement is obtained the Commission reports on the whole case to the Committee of Ministers, and then it will say whether or not there has been a violation of the Convention. But the matter still remains confidential, and it is for the Committee of Ministers alone to decide whether the Commission's report is to be published. So, you see, the Commission's role is diplomatic as well as judicial.

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

vested in someone, given the compromise reached that the jurisdiction of the Court should be optional. The attribution in this way of a judicial function to a political body was an often-criticized feature of the Convention. A particular feature that attracted much adverse comment was that the Committee of Ministers, either because of a failure to reach the requisite majority or for other reasons, sometimes simply failed to give any opinion on the merits of the case.

In cases that were referred to the Court for decision, the Court's judgment was, after delivery, transmitted to the Committee of Ministers, which was (as it still is) responsible for supervising the execution of the judgment. The role played by the Committee in this respect is described in more detail in Chapter 5.

Jonathan L. Sharpe
General Editor

Composition of the old Court on 31 October 1998.

First row (from left to right): *Judges Pekkanen, Palm, De Meyer, Russo, Matscher, Thór Vilhjálmsson (Vice-President), Bernhardt (President), Gölcüklü, Pettiti, Alphonse Spielmann, Valticos, Foighel and Loizou.*

Second row (from left to right): *Judges Gotchev, Mifsud Bonnici, Lopes Rocha, Freeland, Morenilla, Levits, Van Dijk, Wildhaber, Makarczyk, Panţîru and Jungwiert.*

Third row (from left to right): *H. Petzold, Registrar; Judges Toumanov, Jambrek, Butkevych, Kūris, Baka, Repík, Casadevall and Lõhmus; P. Mahoney, Deputy Registrar.*

Judges Macdonald and Voicu were absent.

BROTHERS IN ARMS

It was in 1963 that I first had contact with the European Commission of Human Rights. As the result of an initiative of the then Secretary to the Commission, Anthony McNulty, the Council of Europe offered traineeships to national law students for a period of three months, thus giving them the possibility of becoming acquainted with the working of a European international organization. I was then a legal trainee in Bavaria, Germany, having passed the university law examinations and training for the final law exams.

When I arrived in Strasbourg in the summer of 1963 I was assigned to the Secretariat of the European Commission of Human Rights. We were altogether four trainees, three Germans and a French law student. The reason for Mr McNulty having asked for German-speaking lawyers was the fact that most cases presented to the Commission at the time were either from Germany or from Austria. Our job was to prepare statements of facts – that is, to summarize the applicant's submissions contained in their letters and in the documents submitted. The summary of facts thus always began as follows: 'The applicant is a German/Austrian citizen, born in ... and residing at ... From his/her statements and from the documents submitted by him/her it appears that ....' Then came the summary of the story told by the applicant followed by their complaints under the Convention.

The statement of facts was submitted to a group of three members of the Commission who, after deliberations, gave an opinion regarding the admissibility of the application. This opinion, drafted by the Secretariat, would be annexed to the statement of facts and submitted to the Commission at the next session. The Commission met for a week about five times a year. In 1963 its President was Sture Petrén, who was an eminent Swedish lawyer and government official. At the session of the Commission the member of the Secretariat who had prepared the document would read out the statement of facts and the opinion of the three members. After deliberation, the Commission would decide on the admissibility of the application, normally in accordance with the opinion of and for the reasons given by the three members, who in most cases had proposed the inadmissibility of the application. The text of the decision was prepared by the Secretariat and signed by the President of the Commission and the Secretary. This was usually a straightforward procedure, but in some cases the Secretary had doubts about the reasoning adopted by the Commission and, in a written note to the President, would express his doubts and suggest another reasoning. It was then for the President to take the final view on the matter, but it was seldom that he disagreed with the Secretary.

In 1963 the Secretariat of the Commission consisted of the Secretary, four legal officers and a few administrative assistants. It was situated on the third floor of the Council of Europe's office building, the so-called B-Building. The atmosphere was relaxed, but the increasing influx of applications made it necessary to produce statements of facts quickly and on a non-stop basis. Within the Council of Europe the activities of the Commission were not always taken seriously. It was felt that the Commission was dealing mainly with crazy people, and this impression was encouraged by those assisting the Commission when they told their colleagues of the often strange stories submitted by the applicants.

However, the number of applications received by the Commission continued to increase. In 1955, the year in which six States had accepted the right of individuals to approach the Commission, that body had registered 138 applications. In 1963 it had registered more than double that number – 346 applications. It is important to emphasize that the number of complaints actually received by the Commission exceeded by far the number of registered applications. It was the practice at the time, and throughout the existence of the Commission, that the Secretariat, in correspondence with the applicant, would draw attention to any obvious shortcomings regarding admissibility and would suggest that, unless further explanations were provided, the complaints would not be registered as an application with the Commission. In two out of three cases there would be no further communication from the complainant, and the provisional file opened in their name would be destroyed after a while.

The Commission was composed of an impressive number of legal personalities who were wholly committed to the cause of human rights and aware of the increasing importance of the protection of human rights in Europe through the Convention. When I joined the Secretariat of the Commission as a temporary member of the staff, the President of the Commission was Professor Max Sørensen, an eminent Professor of Law at Aarhus University in Denmark, who later became the first Danish judge on the Court of Justice of the European Communities. His successor was Sir James Fawcett, who was then a fellow of All Souls College, Oxford, and a truly humanitarian personality. He was also a devoted musician and had often with him a silent piano keyboard on which he would practise under the table during lengthy deliberations of the Commission.

Opposite: *President Henri Rolin speaking at the Court's 10th anniversary dinner in 1969. To the left, his predecessor René Cassin.*

Sir James was succeeded as President of the Commission by Professor Carl Aage Nørgaard, whose kindness and outstanding skills of guidance and conciliation had an enormous impact on the success of the Commission during the 12 years of his Presidency. The last President of the Commission was Professor Stefan Trechsel, who steered the Commission into the new era opened by the accession of new member States following the fall of the Berlin Wall. He did so with an outstanding sense of justice and a unique ability to detect and find practical solutions to the increasing problems presented to the Commission.

But the success of the Commission throughout the 44 years of its existence is largely due to the wisdom, devotion and legal eminence of its members for whom, after all, the work for human rights was not their primary occupation. It would go beyond the framework of these short remarks to refer to all of them here, although each and every one would deserve it. But some of the members left a distinctive mark that I would like to mention. Professor Jochen Frowein, who was for many years the Commission's Vice-President, introduced a great deal of fresh legal thinking into the Commission's case-law, and he was one of the members who insisted on cases being brought before the European Court of Human Rights. Professor Torkel Opsahl's work on the cases concerning the difficult situation in Northern Ireland at the time will be remembered by all those who had the privilege of working with him.

Another eminent member of the Commission for many years was Professor Felix Ermacora, who was wholly committed to the cause of human rights, being also active within the human rights work of the United Nations. I remember well the important contributions made to the jurisprudence of the Commission by Sir Basil Hall who had been Treasury Solicitor and a member of the team of the United Kingdom government in the Northern Ireland inter-State case before he became a member of the Commission; by Professor Carel Polak from the Netherlands and Jozef Custers from Belgium, who had both served as ministers in their countries before they were elected members of the Commission; and by Love Kellberg and Hans Danelius from Sweden, whose legal thinking is reflected in many of the decisions and reports of the Commission. I remember the brilliant interventions of Jorge Sampaio, who was then a practising lawyer in Lisbon and who became later the President of Portugal; of Professor René-Jean Dupuy, who was the first member of the Commission from France; and of Professor George Tenekides, who had fled the regime of the Greek colonels and was elected member of the Commission when Greece rejoined the Council of Europe in 1974. And who could forget

Left: *The Commission in the 1960s.*
Below: *Sir James Fawcett (right) and Jozef Custers during a break.*

Brendan Kiernan from Ireland who through his great kindness and warmth contributed so much to the spirit of the Commission and the happy working atmosphere that was always present there? Space prevents me from mentioning many others, whose important contributions to the work of the Commission could have been included in this brief survey.

The European Court of Human Rights was set up in January 1959 – that is, some five years after the Commission was first established. Under Article 48 of the Convention only the Commission or a State concerned was authorized to bring a case before the Court provided that the State concerned had recognized the jurisdiction of the Court in accordance with Article 46 of the Convention. If the case was not referred to the Court, it would be finally decided by the Committee of Ministers of the Council of Europe on the basis of a report drawn up by the Commission. In that report the Commission presented the facts of the case and gave an opinion whether or not the Convention had been violated by the respondent State. The Committee of Ministers normally decided the case in accordance with the opinion expressed by the Commission, irrespective of whether the Commission had found a breach of the Convention or not.

Only seldom did a State refer a case to the Court, and in the beginning the Commission also refrained from bringing cases before the Court. It is difficult to understand the reasons for this attitude of the Commission, which changed around the mid-1970s. One of the reasons for the Commission's reluctance could be that it was trying to establish the confidence of the States in its supervisory activity.

It was perhaps felt that respondent States would consider a reference to the Court as being an unfriendly act that would give the case publicity that might embarrass them. After all, the proceedings before the Commission were not public. It was up to the Committee of Ministers to decide if the Commission's report would be published, and it was generally understood that the report would not be made public if the respondent State did not agree to its publication.

Another reason for the Commission's reluctance to refer cases to the Court might have been the fact that the Commission was convinced that it had come to the right result in the matter and that there was therefore no need to go through the cumbersome procedure of additional court proceedings, with repeated written and oral proceedings that would not add greatly to a case that had already been thoroughly examined by an international judicial body.

Nevertheless, the attitude of the Commission changed considerably around the mid-1970s. This was perhaps partly because a new generation of European legal personalities had been elected to the Commission. These members were of the opinion that the protection of human rights should not be entrusted to the Commission and the Committee of Ministers alone, the Committee being a political body and the Commission a quasi-judicial one. Indeed, there was a need for a fully judicial treatment of the increasingly complex legal issues brought before the Commission. Furthermore, the Commission was reassured through the judgments of the Court that its rulings on the admissibility of an application would not normally be re-examined by the Court. Although the respondent State would

Jochen A. Frowein, Commission member 1973–94.

almost always challenge before the Court the admissibility of the application, the Court normally accepted the Commission's decision declaring the application admissible and concentrated on the merits of the case. Thus, the confidence between the two bodies set up under the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties grew more and more. The few exceptions to this general attitude of the Court, such as in the case of *Van Oosterwijck v. Belgium* (1980), did not change the Commission's approach. That case concerned the legal situation of a transsexual applicant, which the Court rejected for non-exhaustion of domestic remedies after the Commission had found that remedies had been exhausted and that the Convention had been violated.

Only seldom was there an element of discord between the Commission and the Court. Nevertheless, I remember that judges of the Court were sometimes discontented when an application that raised important legal or political issues was declared inadmissible by the Commission for lack of jurisdiction or as being manifestly ill-founded. For example, in a decision of 1978 the Commission declared inadmissible an application brought by the Confédération Française Démocratique du Travail (CFDT) against the European Communities and their member States. The applicant, a French trade union, complained that it had not been designated by the Council of the European Communities as a representative organization entitled to submit lists of candidates for the Consultative Committee of the European Coal and Steel Community (Article 18 of the ECSC Treaty), although it was the second largest among the five representative organizations in France. This appointment was made on the proposal of the governments of the member States, and in the present case France had not included the CFDT on its list. In simply confirming the French government's proposals the Council had not properly exercised the power conferred on it by Article 18 § 2 of the ECSC Treaty. The CFDT considered that these facts constituted a breach of their rights under Articles 11, 13 and 14 of the Convention. The Commission decided that it had no competence *ratione personae* over the matter and declared the application to be inadmissible. Several judges, however, made no secret of their opinion that the Commission should have accepted the application and brought it before the Court for final judgment.

A similar reaction was expressed by judges of the Court when the Commission, in a decision of 1980, declared inadmissible as being manifestly ill-founded the application lodged by Mr McFeeley and other applicants against the United Kingdom. This was the case concerning the so-called 'dirty campaign' brought by several IRA (Irish Republican Army) prisoners in Northern Ireland who sought recognition as political prisoners and complained about their treatment in prison.

For its part, the Commission was sometimes upset about a ruling of the Court. I remember in particular an incident concerning cases against France. France had ratified the Convention in May 1974 but had recognized the right of individual petition only in October 1981. In November 1981 applicant X complained to the Commission about his arrest and detention on remand as well as his criminal prosecution in 1975–6 for having been involved in the activities of a proscribed organization. He maintained that he was the leader of the Breton movement and that the actions against him had been politically motivated. He invoked mainly Article 5 of the Convention. In its decision of 1982 (application no. 9587/81) the Commission first established its competence *ratione temporis*. It referred to the declaration of the French government recognizing the right of individual petition and noted that, unlike the declarations made by other countries, it contained no definition of the scope of the right of individual petition as regards the past. Thus, in the absence of an express limitation to acts and events prior to the date of deposit of the declaration, the Commission considered itself competent *ratione temporis* to deal with the applicant's complaints, as the events in question had occurred after 3 May 1974, being the date on which France had ratified the Convention.

The Commission then turned to the question of the observance of the six-month time limit under Article 26 of the Convention. It noted that the French government had considered that, if the French declaration was regarded as having retrospective effect, the period should run from 2 October 1981, the date on which France had deposited the declaration. The rationale was that before that date the applicant had been unable to bring an application against France before the Commission. That would have meant that the application was not out of time. However, the Commission rejected the application for non-observance of the six-month time limit. It referred to earlier Commission case-law in which it had found both for and against admissibility in similar circumstances. In the present case the Commission clarified the situation. It emphasized the important function the rule contained in Article 26 played 'in the system of supervision carried out by the organs of the Convention of decisions taken by the authorities of a State'. It regarded the rule as constituting an element of stability. The Commission considered therefore 'that the Contracting States cannot on their own authority put aside the rule of compliance with the six-month time limit'. It followed that the Commission was obliged to apply the time limit and to calculate it from the final domestic decision which was in March 1979 – that is, more than six months before the application was lodged in November 1981.

Jorge Sampaio, Commission member 1979–84, President of Portugal 1996–2006 and High Representative for the Alliance of Civilizations since 2007.

Not everyone in the Court and in its Registry agreed with the decision of the Commission. In a judgment of 1986 the Court considered an application lodged with the Commission in 1982 by Mr Bozano against France. The applicant, who had been convicted in 1976 in Italy for having committed serious crimes, had taken refuge in France, where he was apprehended in January 1979. Extradition to Italy had been refused by the French courts, and the applicant was set free, but in October 1979 French police officers seized him, took him to the Swiss border and handed him over to the Swiss police. In June 1980 he was extradited from Switzerland to Italy. The applicant's complaints against France concerned Article 5 of the Convention, and both the Commission in its report and the Court in its judgment found that the applicant's deprivation of liberty in October 1979 constituted a breach of that provision.

However, the Court's judgment contained a curious paragraph that was clearly an *obiter dictum*. It dealt with the six-month time limit in connection with the French government's argument that domestic remedies had not been exhausted. The relevant section (§ 50) in the judgment stated:

> *The applicant could even have argued that he did not need to have recourse to any domestic remedy before applying to the Commission ...*
>
> *If this line of argument were pursued, it would be found that the 'final decision' within the meaning of Article 26* in fine *of the Convention dates back to 26 and 27 October 1979, when Mr Bozano was forcibly conveyed to the Swiss border. The government has not, however, disputed that the six-month time*

'Most violations found against old democracies' *An artist's impression of the Court's hearing in March 1994 in* Lala and Pelladoah v. the Netherlands. *On the left: Commission Secretary Hans Christian Krüger (sitting) and its Delegate Henry Schermers (standing). (Cartoon by Chris Roodbeen published in* De Telegraaf *of 30 April 1994.)*

limit has been complied with, and it is not within the province of the Court to go into an issue of this kind of its own motion; the Court confines itself to noting that the application was lodged on 30 March 1982, that is less than six months after the date – 2 October 1981 – on which France's declaration under Article 25 made it possible for Mr Bozano to apply to the Commission (see, inter alia, *the decision of 9 June 1958 on the admissibility of application no. 214/56,* De Becker v. Belgium *... and the decision of 18 September 1961 on the admissibility of application no. 846/60,* X v. the Netherlands *...).*

No mention was made of the Commission's decision in *X v. France*, nor was there any discussion of the reasons that had led the Commission to come to a different conclusion. At the time the Commission took the reprimand contained in the above passage, as well as the ruling, rather badly.

However, as time passed harmony between the two bodies was re-established. Indeed, from the mid-1980s it became increasingly obvious that the dual examination of applications, first by the Commission and then by the Court, was not necessary. It would be sufficient if there was only one body, a court, to deal with the ever-increasing number of complaints brought to Strasbourg. Although there were clearly differences of opinion about the advisability of 'merging' the Commission and the Court into a single permanent European Court of Human Rights, the view prevailed that this step should now be taken. The excellent cooperation existing between the two Convention organs largely assisted this process of reform.

Hans Christian Krüger

Secretary to the Commission, 1976–97

REFLECTIONS ON MY YEARS AS A MEMBER OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS

The first session of the European Commission of Human Rights which I attended (after my election on 10 July 1995) was held in October 1995. At that time the Commission had already moved to the new Human Rights Building where every member was provided with an adequate office, where the Commission's Secretariat had ample space and where there were finally proper meeting and discussion facilities. I had personal experience of the inadequacy of the Commission's previous premises as I had had the privilege of acting between 1977 and 1982 as government agent for all proceedings before the Commission (and the Court) in which Austria was involved. What a difference then when I arrived in October 1995 as a fully fledged member of that important decision-making body, stepping into a fully equipped office that I did not have to share.

As the Austrian member of the Commission, I was succeeding Felix Ermacora, an outstanding jurist and human rights defender. Ermacora had been sitting on the Commission since Austria became a Party to the Convention in 1958, and by 1995 he was the longest serving member of the Commission. His contribution to the Commission's work and achievements is too important to be analysed here. He also served the United Nations in many capacities, including as a member of the Human Rights Committee and as rapporteur on the human rights situation in Afghanistan, appointed by the Commission on Human Rights in 1984.

It was by no means easy to 'replace' a personality like Felix Ermacora as a member of the Commission. My own work was, in any case, facilitated to a large degree by the well-established and harmonious cooperation among all members and by the

extensive support given by the Secretariat. Fortunately, I was no newcomer to the system, and this allowed me to participate fully in the work of the Commission from the first meeting on.

A second matter to be mentioned is Austria's attitude towards the Convention. Austria regained its full sovereignty only in 1955 and from that date onwards could map its own political way into the organized community of States. Having been admitted to the United Nations in December 1955, Austria also sought membership of the Council of Europe, which was granted in 1956. Realizing the direct link between membership of the Council and the Council's desire to broaden the area of application of its main achievement – the protection of the rights of the individual through the Convention on Human Rights and its supervising institutions – preparations were started immediately for the ratification of the Convention, and following parliamentary approval this resulted in Austria becoming the 13th State Party to the Convention (effective 3 September 1958). At that time not all of the member States of the Council of Europe had accepted the Convention. Austria also submitted its declaration under Article 25 (recognizing the Commission's competence to receive individual petitions) at a moment when the majority of States, including those that later joined the human rights system of the Council, apparently felt that they needed more time for reflection before accepting any international control mechanism that would be open to all individuals under their jurisdiction. Italy, the United Kingdom and France are cases in point, but also the Netherlands, Greece, Malta, Cyprus and Turkey.

This is worth mentioning because it underlines the value that Austria attributed to the concrete implementation of the Convention and the effective protection of all the rights therein enshrined for the individual. It may also explain the interest with which the government followed the activities of the Commission (and, of course, the Court), anxious as it was to contribute to the practical solution of any legal problems to be revealed along the way. It is a fact that Austria, cooperating closely with the Commission, concluded more friendly settlements than most other States Parties to the Convention. Those friendly settlements, in turn, led to major modifications of the relevant domestic legislation.

Returning to my own years at the Commission, I was struck by the cooperative spirit prevailing in that body whose membership, at the moment of my arrival, had already risen to 30. My entry coincided roughly with Stefan Trechsel's assumption of the chairmanship. He was an effective President, sometimes authoritarian, a skilful leader of the discussion, intimately familiar with the practices of the Commission and its case-law, and, quite naturally, emotionally attached to the cause of human rights as he saw it. His emotion became visible from time to time, particularly when members were reluctant to follow his line of thinking. In addition to being an excellent President, he had the burden of 'liquidating' the Commission and preparing for the smooth transfer of its competences and workload to the new Court. In this connection I differed with him on several organizational aspects, but again harmony prevailed and the Commission was able to complete its work in time, transmitting a good number of well-reasoned opinions to the new Court.

Kurt Herndl

Member of the Commission, 1995–8

OUR PRESIDENT'S FAREWELL

Lines written in recollection of the last session of the European Commission of Human Rights

Part-timers, we took no offence
When bade farewell as amateurs
Though we professed an art and science
To filter grief to judgment: indubitably
We used a hard-cut language.

That frame on our wall
Served to show not *mutilés* or skeletons
But names pledged, signed, photographed,
Developed in black and white, and lifted
From their solution by one dripping edge.

Why take offence when we, whose law-talk
Cannot start until we hear who will be late,
Who has sent love, who is sick
(To whom we send love), who has died –
The greatly loved – know well his meaning.

And thus keep guarding the outraged flare
The hidden dark-room thumbprint?

Borona Keefe

(pen-name of Jane Liddy, the last Irish member of the Commission)

A COURT ON A RESTRICTED DIET

In 1959 and 1960 the Council of Europe recruited about a dozen young practising lawyers from various member States to provide secretariat assistance in the field of human rights. At the time

The Court's hearing in Airey v. Ireland *(1979). From left to right: Senator Mary Robinson, Barrister-at-Law, Torkel Opsahl, one of the Commission Delegates, Brendan Walsh, Solicitor, and Michael O'Boyle from the Commission Secretariat. Robinson and Walsh represented the applicant. Mary Robinson later became President of Ireland (1990–7) and United Nations High Commissioner for Human Rights (1997–2002).*

the Directorate of Human Rights embraced the Registry of the Court and the Secretariat of the European Commission on Human Rights as well as the intergovernmental sector of the Council of Europe. Faced with silence in the European Convention on Human Rights, the Court decided that it was up to it to elect its own Registrar and Deputy Registrar, unlike the Commission, whose Secretary was, under the terms of the Convention, appointed by the Secretary General of the Council. In the event, the Court elected its officers from the ranks of the Secretariat General, but they remained officials of the Council, a situation that could, and after more than 30 years did, lead to administrative difficulty.

The situation changed late in 1961 when the Commission's staff were more or less hived off and identified separately. The Court's general staff continued with the Human Rights Directorate where the Director was also Registrar. When the Registrar/Director became Deputy Secretary General of the Council, the then Director of Legal Affairs was elected Registrar, combining the two posts for several years until 1968, and a new head of the Human Rights Directorate was appointed. In the mid-1970s at one stage there were no cases pending before the Court, and as it happened, this coincided with a general review of staffing at the Council of Europe by an officially appointed Committee. This body recommended, among other things, the abolition of the post of Deputy Registrar of the Court as being unnecessary. New cases were referred to the Court, which never again found itself without business, and nothing further was heard of the recommendation.

The first President of the Court, Lord McNair, never presided over a hearing before the Court in a contentious case. The Vice-President of the Court, René Cassin, presided in the first two cases, *Lawless v. Ireland* (1960 and 1961) and *De Becker v. Belgium* (1962). The composition of the Court in each case was a Chamber of members drawn by lot. Both

cases were brought before the Court by the Commission. The original individual applicant before the Commission had no right to refer a case to the Court nor any official status before the Court. The Commission explained its opinion to the Court as well as the original applicant's complaint that the Convention had been breached. In April 1961 *The Times* in London reported incorrectly that the Court had been addressed by Sean MacBride SC, who was indeed present for the public hearing of the *Lawless* case in which he had been the applicant's leading counsel before the Commission. This incorrect newspaper report caused considerable concern and dismay, especially to the delegation representing the Irish government. In fact, the error arose from a mistake made in a telephone conversation by a press official of the Council of Europe.

Life at the Court in its early days has been described as follows by a former member of the Registry.

When I turned up at the old Human Rights Building one late August morning in 1969, I discovered to my surprise that all the people I had been asked to meet were absent. It was August, and it was a Friday. I felt I had stepped into Sleepy Hollow. The following Monday – my first day at work – held other surprises. The whole Court staff was there – all six of them – and I was wondering how an international court could function with just seven people when I discovered that the Court Registry was not overburdened with work and that, in any case, most of that work was done by the Registrar himself, the rest of the staff being expected to translate his drafts from French to English.

The Court had just given judgment in the *Matznetter* and *Stögmüller* cases against Austria (1969) when a new case was brought before the Court, the *Delcourt* case against Belgium (1970). For the next six months we worked on this case. It was far from hectic, but I got to know the judges, who met a number of times in Strasbourg for their deliberations. As might be expected, they were a varied group, including Sir Humphrey Waldock, the President, remarkable for his modesty, clarity of mind and caution in avoiding the establishment of too far-reaching precedents; René Cassin, a historic figure fired by enthusiasm for the defence of human rights, whose contributions to the Court's deliberations were marked by verve and energy; the colourful liberal, Terje Wold; and Henri Rolin, whose pleadings, sound in law, were often delivered with passion.

At a time when many member States had not yet accepted the right of individual petition, political considerations sometimes coloured the position adopted by some judges, mostly with good intentions. They were grudging in deciding

First-day cover issued on the occasion of the 25th anniversary of the Council of Europe in 1974.

against the respondent State for fear that a condemnation would discourage their own country from accepting the right of individual petition.

I also got to know better the relations with the European Commission, which were courteous but not loving. The Commission was prospering and the Court survived partly out of the morsels that fell from the Commission's table. Jealousy was inevitable, and it took 30 years to set the record straight.

The public hearings (I experienced only two) were blown up into major events, which sharply contrasted with the ordinary calm and quiet pace of the Registry. A whole army of French and English typists, assisted by a team of translators, typed the record of the hearing late through the night so that it would be available to the judges the following morning. Computers were unknown to the Council of Europe practically up to the 1980s, and young readers would probably not understand that typing was done on stencils and then roneotyped. Those late-night sittings would today take only a few hours. But we all felt the exhilaration of urgency and the satisfaction of hard work. After all, it was thanks to these primitive methods and through the stubbornness of the staff that the Court, practically moribund, survived and triumphed beyond anyone's imagination.

When the new Human Rights Building started functioning, a computer centre was installed in the old building. Whenever I forget my computer password – which happens, as time passes, with alarming frequency – I have to go to the computer centre to get a new password. On these occasions I pass the office I shared for two years with the future Registrar of the Court of Human Rights and, as memories flood back to me, I feel proud I had my little share in those pioneering days.

In accordance with the Convention, vacancies on the Court were filled (as is still the case today) by the relevant government presenting a list of three candidates from which the Parliamentary Assembly elected the new judge. As a rule, the Assembly elected the candidate preferred by the government, but this was not invariably the case. In one election the preferred candidate included in the curriculum vitae a reference to their active part in the endeavours of their country to achieve independence as a State. This reference aroused the ire of the representatives in the Assembly of the former colonial State, who incited other members to elect a different candidate. On the expiry of this judge's terms of office the government was reluctant to chance another rebuff and declined to present candidates so that the first judge remained in office, again as prescribed by the Convention, for a considerable number of years until the political difficulties were resolved.

One feature of the early internal operation of the Court was that the members, then part time, received no remuneration but their travel expenses and a daily subsistence allowance for attendance at meetings. Later on, an additional allowance was granted for work carried out at home. The significance of this system reflected national taxation practice in some member States, where any remuneration would have had to be declared and probably taxed. The whole system was subsequently changed radically.

In the early days the bringing of a complaint before the Commission, not to speak of a reference to the Court, was considered by some political circles as being offensive or insulting to the sovereignty of States. This attitude changed gradually as the novelty of the procedure wore off, which was due in great measure to the careful and sometimes cautious approach of the Commission and the Court to their consideration of the issues raised. Eventually, political circles of pretty well all hues came to accept that challenges to national decisions or policies were just part of the process and were not revolutionary.

John Smyth
Deputy Registrar of the Court, 1968–75
and
Henry Scicluna
Member of the Registry of the Court, 1969–71

CALM BEFORE THE STORM

I was elected to the Court, on which I eventually served as judge and later as Vice-President for 27 years, in 1965, when only two cases (*Lawless v. Ireland*, 1960 and 1961, and *De Becker v. Belgium*, 1962) had been decided. In those first years of the Court whenever we met it was a great occasion. I used to say, much to President Cassin's amusement, that we were a bunch of judicial *chômeurs* (unemployed workers). As is well known, States were at first a little apprehensive about the possible impact of the Court's jurisprudence on their national laws and administrative practice, but as that unjustified apprehension was gradually overcome and confidence increased, so did the number of cases. At first, however, it was nowhere like the avalanche that was to follow, also in my own time.

There were occasions in those early years when we met literally only once a year for the administrative session, which was then followed by the annual dinner. On my own suggestion, the two events were held in early May to coincide with the asparagus season.

Among the most memorable of the early cases were the momentous Belgian linguistic case (*Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium*, 1967 and 1968) and, as more cases started coming to us from the Commission, the *Sunday Times v. the United Kingdom (no. 1)* case (1979), in which we were almost evenly divided. Of course, those were the formative years, when the foundations for the Court's now rich jurisprudence were being laid.

I was a great admirer of that grand old man who was President of the Court when I first joined, René Cassin, the principal writer of the Universal Declaration of Human Rights and winner of the Nobel Peace Prize. We eventually became close friends, and when he died I was invited by *La Revue des Droits de l'Homme* to write a short *témoignage* (testimonial) about him. Among other things I wrote this: 'The first thing about him that impressed me was his extraordinary clarity of mind. Indeed he could make the most complex of questions look disarmingly simple by his almost uncanny ability to identify precisely the essential point. Having done so, he could then present his argument briefly, clearly and convincingly without any unnecessary padding. He spoke with warmth – I was going to say with passion – but without rhetoric and invariably left his mark. Despite his age, nothing escaped him, as was shown by his summing up at the close of long meetings.'

Cassin and I continued to correspond well after he left the Court. When he was awarded the Nobel Prize he wrote to me, with admirable modesty: *'La Cour européenne a été visée et honorée par le Comité Nobel'* (The European Court has been noticed and honoured by the Nobel Committee). I had the privilege of attending the moving and unforgettable ceremony when his remains were transferred to the Panthéon in Paris in 1987.

Apart from Cassin, my closest friends were the Italians Giorgio Balladore Pallieri and Carlo Russo, the Germans Hermann Mosler and Rudolf Bernhardt (the latter became President after my time), and the Icelander Thór Vilhjálmsson, who succeeded me as Vice-President. Balladore Pallieri, an eminent author of constitutional and international law textbooks, eventually became President of the Court in 1974. He came from a distinguished Piedmontese aristocratic family and, apart from being a great jurist, was also a great art collector.

President Gerard Wiarda (unlike his successor Rolv Ryssdal, who was a bulldozer) never liked to take a quick decision. He mulled every single little detail in his mind, and his analysis was always admirably precise. He was a sound judge, unassuming but perspicacious. Ryssdal joined to his legal acumen an uncommon organizational ability. He entrusted me as his Vice-President with a number of duties in both the judicial and the organizational field. I was elected Vice-President in 1986 and in that capacity presided over a number of cases and welcomed to the Court various visiting heads of State.

During my three consecutive terms of office, we had a number of organized visits to and from various European constitutional courts. The Court was also represented at several international human rights congresses, including in 1983 one in an unusual but splendid location, Madeira. A delegation of which I formed part together with President Rolv Ryssdal, the Canadian judge Ronald Macdonald (elected in respect of Liechtenstein) and Marc-André Eissen (our Registrar) also visited the Inter-American Court of Human Rights in San José, Costa Rica, in 1986. We exchanged some interesting views on the working of our respective Courts and in particular discussed a subject of common interest in our respective Conventions.

Eissen, a rather reserved character, was worthily succeeded as Registrar by his deputy Herbert Petzold, who was more of an extrovert. They were ably assisted by Paul Mahoney, who later became President of the European Union Civil Service Tribunal in Luxembourg, Jonathan Sharpe, who later became Secretary to the Association of former judges of the Court, Vincent Berger and Montserrat Enrich Mas, while Alice Bouras from the Registry was literally everywhere and, like the saints, practically at the same time. While we were working in Strasbourg, Eissen, Petzold, Mahoney and Sharpe took it in turns to ask us to dinner, in groups of three or four, in their respective homes, and I still fondly remember the fine Genoese cuisine, not greatly dissimilar from ours in Malta, of Maria Rosa Sharpe.

The Court met in Chambers of seven judges, whose names were drawn by lot, or more rarely in plenary. Our working method was essentially divided into three stages. After a public hearing and having previously studied the Commission's report and all other relevant papers, we held the first deliberations, during which the whole case was discussed, with each judge giving his own views and ultimately his preliminary vote. This was followed by a draft judgment drawn up by a drafting Committee of judges assisted by the Registry on the basis of an extensive record of the deliberations, previously sent to all participating judges. Then came the final deliberations, during which the draft judgment was scrutinized paragraph by paragraph, changes and additions made and a final vote taken. Those judges who signified their intentions of presenting a separate opinion were given time to do so before the delivery of the judgment in open court.

The delivery of judgment was at first a very solemn affair, with all judges in the case being present. Our entry into the courtroom was heralded by an awesome person in full regalia. Then, as this ceremony started becoming more frequent, the occasion gradually

lost much of its pomp and lustre. Judgments started to be read by the President or the Vice-President alone, accompanied by the Registrar. The gradual but eventually dramatic increase in the number of cases inevitably impinged on the time available.

When I left the Court we already had a problem with the number of cases on our list. Things started to become rather difficult for what was then a part-time court, and a solution had to be found. Finally the Court became as it were the victim of its own success.

John Cremona

Vice-President of the Court, 1986–92

THE COURT FROM THE VIEWPOINT OF A FORMER JUDGE

All judges arrive at the Court bringing with them their own cultural 'baggage': their legal training, the mentality of their home country, their philosophical and ideological perspectives and their professional experience. At the outset they tend to believe that only what they have learned 'back home' is valid and that their domestic law alone provides the right solutions. Before long, however, after discussions with colleagues, whether in deliberations or in private conversation, the judge realizes that there are other solutions that are equally valid, if not better, arising, for example, from the difference in reasoning between continental law and the common law. Even when applying a different methodology one can often arrive at equivalent solutions. This is an experience that leads to a certain intellectual humility – something that is also of benefit to lawyers.

It also becomes clear straight away that the national judge is certainly not there to 'defend' their own country. That judge's role is basically to explain the finer points of the country's domestic law to colleagues on the bench and to remain somewhat reserved during deliberations rather than taking initiatives, unless they have the impression that the discussion is on the wrong track. Most judges saw their role in that light, and it was extremely rare for a judge to act differently, with the exception of some ad hoc judges. I learned all this from Walter Ganshof van der Meersch, who was the Belgian judge at the time I joined the Court.

Judges must be independent and not subjected to pressure by the government of the State in respect of which they are elected. That is generally the case, but there are exceptions. I note with satisfaction that throughout my 22 years as judge I never received from my State any indications or suggestions, and not once did I speak about pending cases with the agents of my country's government, even though they had all been junior colleagues of mine during my years in the diplomatic service. Only after the judgment had been delivered did we discuss the case. That being said, both independence and impartiality are subjective attributes. Judges who are known for these qualities will decide on the interpretation of the law and the assessment of the facts according to their inner conviction, but forming that conviction depends on a whole series of personal factors, with the result that it is impossible to provide a rational explanation for it.

To preside successfully over a bench such as that of the Strasbourg Court involves above all an in-depth knowledge of the cases before it. It also demands a high quality of leadership, which particularly requires a precise idea of the subject-matter and the result to be attained. On that subject, I had great admiration for the Presidents who, in my day, led the work of the Court: the Italian international law jurist Giorgio Balladore Pallieri (1974–80); Gerard Wiarda from the Netherlands (1981–5), a great philosopher; the Norwegian Rolv Ryssdal (1985–98), who contributed his experience and spirit of efficiency as a former President of his country's Supreme Court; and Rudolf Bernhardt (March 1998–November 1998), eminent international law jurist and former Director of the renowned *Institut für ausländisches und öffentliches Recht und Völkerrecht* in Heidelberg.

The Court of Strasbourg is a court of justice bound by the law. It is not a humanitarian Committee that can take decisions based on common sense or according to the personal ideas of its members. It must interpret the legal provisions of the Convention in accordance with the rules on the interpretation of international instruments – in principle those enshrined in Articles 31 to 32 of the 1969 Vienna Convention on the Law of Treaties. In addition, in view of the Court's duty to 'ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention' (Article 19), it must adopt a method of interpretation that is consistent with the object and purpose of the Convention. This may occasionally mean going beyond the text of the Convention and opting for an interpretation of its provisions that is sometimes narrow, sometimes broad, in order to address situations that are not expressly provided for in the text. The Court's case-law is largely marked by common sense, realism and a significant degree of restraint – judicial self-restraint is indeed a hallmark of the Court's work.

The means of interpretation used by the Court are, in general, no longer called into question. What is often controversial, however, is the way they are applied in specific cases. Moreover, the spirit of realism has led the Court to tone down certain excessive demands, which, inspired by a certain idealism, characterized the earlier case-law. All this, of course, is part of a constantly evolving process.

The Court in the 1960s.

The formulation and reasoning of the Court's judgments depend first and foremost on its role, which is to protect personal rights – that is, by adjudicating on specific applications alleging a violation of the Convention. Unlike certain constitutional courts, which have the power to rule in the abstract (*ex ante* or *ex post*) on a statute, the Strasbourg Court does not pass judgment on the general scope of a given Convention provision. The reasoning in its judgments must be narrow – limited to the case in hand – which explains why, on occasion, a broader line of reasoning in a draft judgment may be rejected in the last deliberation because some members of the Chamber may be prepared to agree only with the result advocated by the majority – the finding of a violation or no violation – if it is strictly circumscribed by the circumstances of the case, to avoid creating a precedent for unforeseeable future cases.

It is sometimes necessary to go beyond an interpretation that is confined to a specific case. Such an approach is also desirable for the organization of the Court's work, and it is also in the interest of the Contracting States because it facilitates the adaptation of their domestic law to Convention requirements, as clarified by case-law. But here, too, the judges' different concepts of the Court's role may come into play.

The Court's case-law, developed over half a century of activity, has given substance and structure to the largely vague and imprecise norms of the Convention and its Protocols. It has also broadened the scope of its provisions and fine-tuned their application. In doing so it has raised the protection of human rights in Europe to a higher and substantially uniform standard. Credit for all this is due to the commitment shown by the Court's judges and the lawyers in its Registry, who devote at least a few years – and even sometimes a significant part of their lives – to this achievement. While starting off with their different ideas, they invariably endeavour to find a common denominator. The result is not always ideal, but it is without doubt highly satisfactory. It has been said that politics is about achieving what is possible. Similarly, it has proved possible to arrive at jurisprudential solutions that can be accepted by everyone.

Franz Matscher

Judge at the Court, 1977–98