



3 section

Some Notable People in the Court's History

CHAPTER 7

Presidents of the Court

Lord (Arnold Duncan) McNair (1885–1975)

British

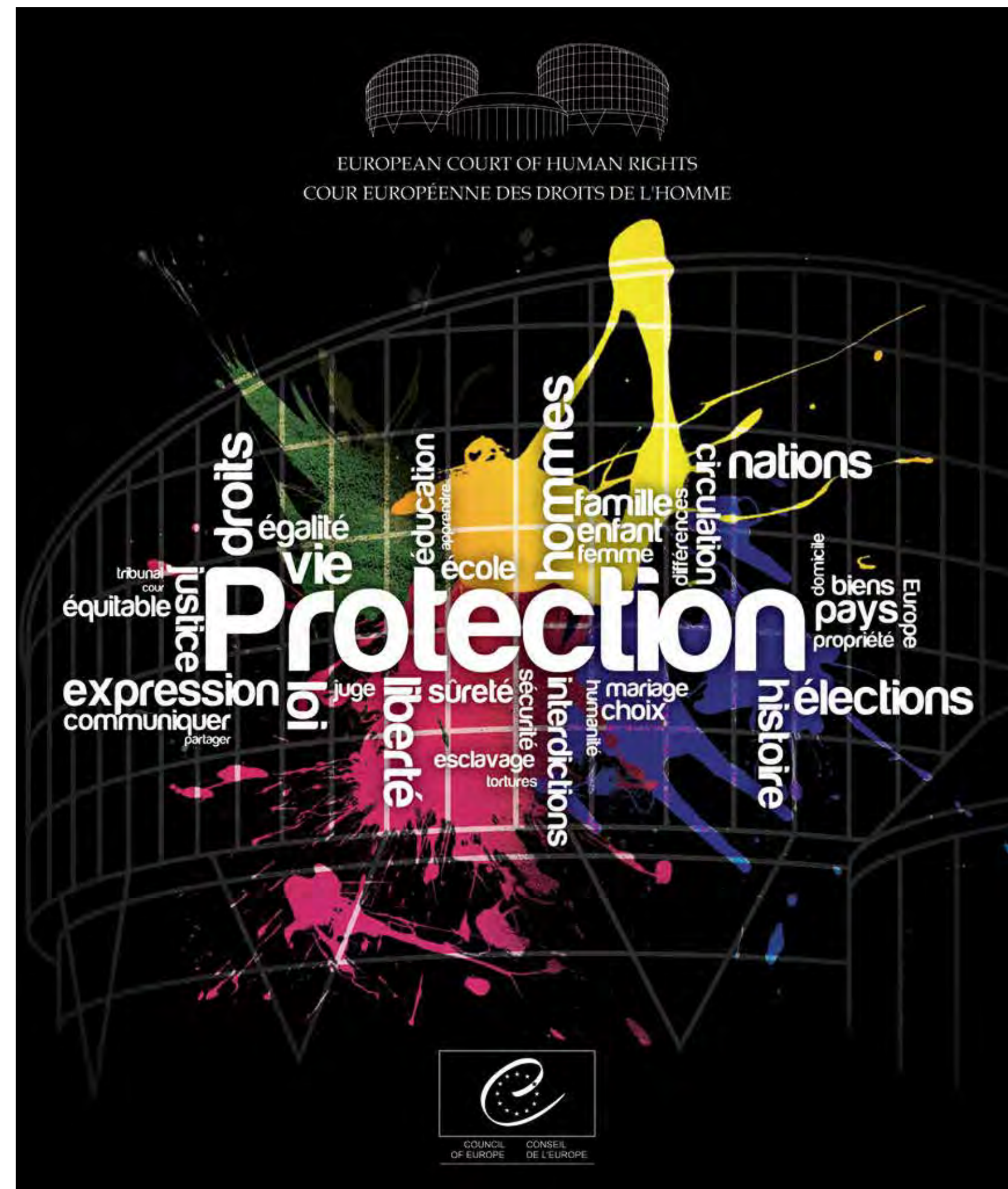
- Barrister, law professor and international judge
- Judge (1946–52) and President of the International Court of Justice (1952–5)
- President (1959–65) and thereafter judge at the Court (1965–6)

Lord McNair served as the first President of the Court. He was educated at Aldenham School and Gonville and Caius College, Cambridge, where he read law. From 1907 to 1908 he was Secretary of the Cambridge University Liberal Club, and in 1909 he was President of the Cambridge Union. After practising as a solicitor in London, he returned to Cambridge in 1912 to become a fellow of his old college, later becoming senior tutor. In 1917 he was called to the Bar, Gray's Inn. He had taken an interest in international law from an early age, and in 1935 he was appointed Whewell Professor of International Law at Cambridge. However, he left this chair in 1937 to become Vice-Chancellor of Liverpool University. He remained at Liverpool until 1945, when he returned to Cambridge to take up the position of Professor of Comparative Law. The following year he was



Above: Lord (Arnold Duncan) McNair.

Opposite: Poster with some of the Convention's keywords (2009).



elected a judge of the International Court of Justice in The Hague, a post he held until 1955, and he was also President of the Court from 1952 to 1955.

As another great British judge, Sir Gerald Fitzmaurice, put it in the obituary that was published in the *British Year Book of International Law* in 1975:

[Lord McNair made] a valuable contribution [as President of the European Court] ... setting that Court on its path as a going concern; the system provided for under the European Convention, whereby the Court sits in Chambers, the members of which are drawn by lot for each separate case, had the effect that he was able to take virtually no direct part in the substantive, as opposed to the administrative work of the Court.

Dean Spielmann
Judge at the Court

René Cassin (1887–1976)

French

- *Law professor and judge*
- *Vice-President of the Conseil d’Etat (1944–60)*
- *Judge of the Constitutional Council (1960–71)*
- *Nobel Peace Prize Laureate (1968)*
- *Vice-President (1959–65), President (1965–8) and thereafter judge at the Court (1968–76)*

René Cassin, that ‘foot-soldier in the cause of human rights’, as he liked to call himself, waged a fierce battle for human rights throughout his life on the international level.

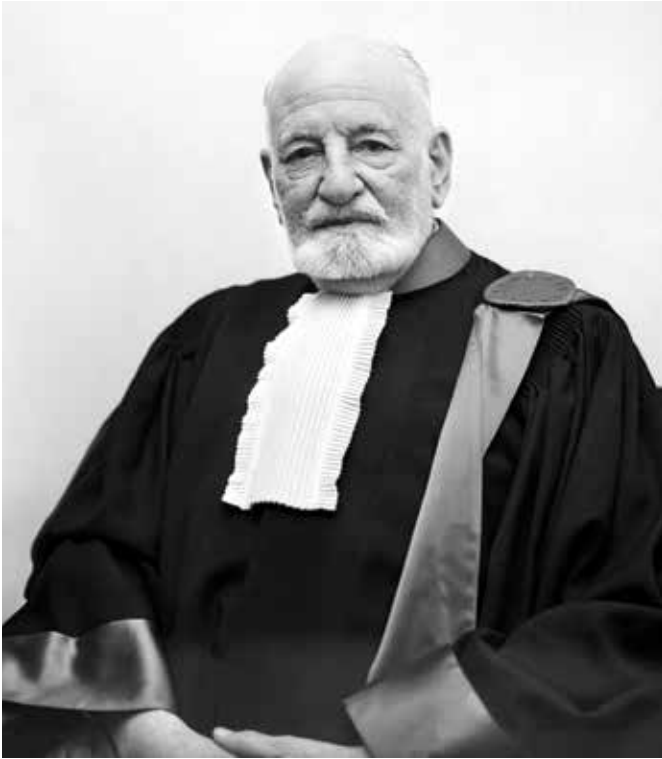
Immediately after the end of the war, as France’s representative on the United Nations Human Rights Commission, he was the main promoter, together with Eleanor Roosevelt, of the Universal Declaration of Human Rights, a large part of which he drafted himself. He described the Declaration as ‘the first document of an ethical nature adopted by organized humanity as a whole following a war the like of which had never been seen’. It was a considerable step forward in the protection of fundamental rights, ‘a gleam of hope for humanity’, as he put it. However, its effectiveness was limited by its lack of binding force.

During the years following the adoption of the Universal Declaration, René Cassin, already considered one of the most capable theoreticians of international law, again put himself at the service of the international legal community and human

rights. He wanted above all to place human rights at the heart of the European construction project then just beginning. He took an active part in the drafting of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, which includes most of the rights set out in the Universal Declaration.

Unlike the 1948 text, however, the European Convention has more than just declaratory scope. Its drafters realized that human rights could be effectively protected only if they were given binding legal force and that it was essential to set up a judicial system calculated to guarantee the effective application of Convention rights. Those were the circumstances that led to the creation of the European Commission and European Court of Human Rights.

Cassin played a leading role within the Court, which was established in 1959. He was its first Vice-President, from 1959 to 1965, and served as President from 1965 to 1968. He was thus the first French judge to preside over the Court, at a time when France was still refusing to ratify the Convention. During his time as a judge in Strasbourg, he never ceased to campaign for France to impose on itself the universal rules that it had willed into being and in which he had invested so much hope. It was not until



René Cassin.

1974 that France ratified the Convention, only two years before Cassin’s death. To his great regret, he did not live long enough to see its acceptance of the right of individual petition, which did not come until 1981.

Cassin was awarded the Nobel Peace Prize in 1968 for the whole of his work in the cause of fundamental human rights. No one understood better than he did that respect for human rights and peace are indissolubly linked, an idea he expressed in the following phrase: ‘There will be no peace on this planet for as long as human rights continue to be infringed in some corner of it.’ Those words remain as relevant now as they were then, as does René Cassin’s fight for human rights.

Patrick Titun

Head of the Private Office of the President of the Court

Henri Rolin (1891–1973)

Belgian

- *Legal practitioner, politician, law professor and judge*
- *Judge (1959–65 and 1971–3), Vice-President (1965–8) and President (1968–71)*

Henri Rolin, Strasbourg’s first Belgian judge, succeeded René Cassin as the third President of the Court. For various reasons he was unable to sit in the first three cases – including *De Becker* (1962) and the Belgian linguistic case (*Case ‘relating to certain aspects of the laws on the use of languages in education in Belgium’*, 1967 and 1968), both concerning his native country – so his judicial career did not begin any more auspiciously than that of ‘his’ first President. Indeed, it did not start until November 1966, nearly eight years after he had been elected as a judge (and thus eight years after the Court was established), with the first German and Austrian cases ...

Rolin had lived through the years when there were no cases, and although he was perhaps not the instigator of the Court’s plans to denounce this state of affairs publicly, he had been aware from the outset of the risks it entailed for the existence of the system of protection afforded by the Convention. His memorable lecture, ‘Has the European Court of Human Rights a Future?’, which was published in the spring of 1965, stands as proof of this. This lecture, deriving its power and incisiveness from rhetoric and expressive stylistic force, became a historic document on which President Ryssdal later drew in his long-running campaign to replace the supervisory machinery set up under the 1950 Convention with a fully judicial system.



Henri Rolin.

It is worth noting that after leading the Court to streamline its rules and organize its working methods in 1969, Rolin was the first President to criticize the unwieldiness and complexity of the Convention’s supervisory machinery. Indeed, it was on his initiative and under his presidency that in 1971 the Court instructed an initial working party to examine ways to simplify and streamline the procedure established by the Convention ...

Rolin was not what one might describe as an easy man. Realistic and visionary, upright and true to his beliefs, he defended his opinions resolutely, without fearing the accusation that his leadership of the Court was slightly authoritarian. He was direct and often peremptory, sometimes abrupt. In fact, he was the only one of ‘my’ Presidents I ever heard apologizing to one of his colleagues at a meeting for having bluntly criticized his position. The Court bore no resentment during these few delicate moments, knowing that its President was passionate and unconditional in his devotion to the common cause and his commitment to the Court itself. This commitment to the institution over

which he presided earned him the respect – and affection – of his colleagues because in 1949, as a member of the Consultative Assembly of the Council of Europe, he had opposed the idea of a European Court of Human Rights, which was only logical given his idea at that time of a system for protecting human rights in Europe. Once Rolin was elected as a judge, and subsequently as Vice-President and then President of the Court, it was not unusual for his colleagues to tell him, somewhat mischievously, of their joy at being guided by a convert. He took a philosophical view of their reminders of former times, with that thin, faintly ironic smile captured so well by his official portrait photographer.

It should be borne in mind that in 1959 the Court included some exceptional figures, a group that President Ryssdal often described as a model for States to emulate when they were drawing up lists of candidates for election as judges by the Council of Europe’s Parliamentary Assembly. Ensuring the cohesion of this group was a challenge for each of its Presidents, and that all of them succeeded in doing so, in particular the first Presidents, including Rolin, is due to the fact that the original members of the Court, despite their strong personalities, had all lived through the same experiences of the rise of barbarism in the 1930s and 1940s, followed by the fall of Nazism as a result of a resistance in which many of them had played an active part. Risking their lives, they had fought for the values of a society that would respect human dignity and liberty, and Henri Rolin, like René Cassin, was an indisputable and undisputed protagonist in this fight. The vehemence with which he reacted within the Court against the putsch by the Greek colonels in 1967 and what he called the betrayal of the Constitution by the king gave us an idea of what Rolin the combatant had been like, following the invasion and occupation of his country...

Who was Henri Rolin? Let us leave the last word to the man himself. At the end of the dinner he held in René Cassin’s honour to celebrate the award of the Nobel Prize, a young female colleague recently recruited to the Registry, who was struck by President Rolin’s vitality, asked him with the confidence typical of her age: ‘What keeps you going, Mr President?’ Rolin replied instantly, ‘Love, madam’, before going on to explain, somewhat amused at the confusion he had caused, ‘love of life’.

Herbert Petzold*

Special Adviser to the President of the Court, 1998–2000

Registrar of the Court, 1995–8

Deputy Registrar of the Court, 1975–95



Sir Humphrey Waldock.

Sir Humphrey Waldock (1904–81)

British

- *Barrister, law professor and international judge*
- *Member (1954–5) and President of the European Commission of Human Rights (1955–62)*
- *Judge (1966–8), Vice-President (1968–71) and President (1971–4)*
- *Judge (1973–9) and President of the International Court of Justice (1979–81)*

Sir Humphrey Waldock was the only person to have presided over both the Strasbourg institutions, the Commission from 1955 to 1962 and the Court from 1971 to 1974.

Following studies at Oxford University, Sir Humphrey was called to the Bar and later developed a substantial practice in public international law, notably as counsel before the International Court of Justice. He retained links with his University, initially as a tutor and then, from 1947 to 1972, as Chichele Professor of Public International Law. He was a member of the International Law Commission from 1961 to 1972, and its President in 1967; as Special Rapporteur on the law of treaties, his reports eventually led to the 1969 Vienna Convention on the Law of Treaties. In 1971 Sir Humphrey

became a judge at the International Court of Justice, of which he was President from 1979 to 1981. He was for many years editor of the *British Year Book of International Law* and was a member (an associate in 1950, regular in 1961) of the Institute of International Law.

During Sir Humphrey’s years at the Commission, that institution was dealing above all with problems of organizational and working methods, including the organization of its Secretariat. During his time at the Court, which pre-dated the substantial increase in its workload, that body decided eight cases, though Sir Humphrey did not sit in all of them.

Mark E. Villiger

Judge at the Court

Giorgio Balladore Pallieri (1904–80)

Italian

- *Law professor*
- *Judge (1959–71), Vice-President (1971–4) and President (1974–80)*

An eminent constitutional and international lawyer, Count Giorgio Balladore Pallieri received a doctorate in jurisprudence at Turin University in 1926. He moved to the University of Messina, becoming Professor of International Law there in 1930. He held chairs of international law at the University of Modena (1933), the University of Genoa (1934) and the Catholic University of the Sacred Heart in Milan (1935). In 1935, 1949 and 1969 he gave courses at the Hague Academy of International Law, and in 1955 he became a professor at the *Escuela de Funcionarios Internacionales* in Madrid. He later returned to the Catholic University of the Sacred Heart.

Balladore Pallieri was a member (an associate in 1948, regular in 1955) of the Institute of International Law, the Legal Committee of the Italian Ministry of Foreign Affairs and the Advisory Committee of the European Atomic Energy Community. He wrote numerous works on constitutional and international law, and these made him a household name among Italian law students.

He began to serve on the newly formed Court as judge in respect of Italy in 1959. In 1971 he became Vice-President and in 1974 was elected President, an office he held until his death in 1980. He was thus a member of the Court for more than 20 years. He came from a distinguished Piedmontese aristocratic family and was

characterized both by the unfailing courtesy he showed to all at all times and by astute powers of observation concealed beneath a calm exterior.

Two personal reminiscences may not be out of place. First, Balladore Pallieri had the habit during the Court’s afternoon deliberations (those were different times!) of indulging in a large cigar. The casual observer might have thought that this distracted his attention. Not so, for having listened carefully to his colleagues he would conclude the discussions with a brief and neat summing-up that completely covered the ground. Second, he was a great art collector. In those days (when the judges were not permanently resident in Strasbourg) the names of the members of a Chamber constituted to hear a case were drawn by lot by the President of the Court in the presence of the Registrar or his representative. On several occasions the undersigned, who happened to be passing by the President’s lakeside villa in Italy, participated in this procedure, with the names being drawn from one of the President’s priceless collection of Grecian urns.

Jonathan L. Sharpe

General Editor



Giorgio Balladore Pallieri.

Gerard Wiarda (1906–88)

Netherlands

- *Law professor and judge*
- *Judge (1950–73) and President of the Netherlands Supreme Court (1973–6)*
- *Judge (1966–77), Vice-President (1977–80) and President (1981–5)*

Gerard Wiarda came to Strasbourg in September 1966 when the Court, then in the seventh year of its existence, was starting to examine its third case. Those were indeed the days when the Court was busy mainly with refining its rules of procedure, not forgetting, of course, the President’s annual dinner party in the Vosges mountains.

Gerard Wiarda and also John Cremona, the Vice-President, and the former Vice-President, Hermann Mosler ... are direct witnesses of that idyllic period, which seems to take us back to prehistory ... Indeed, as from the mid-1970s the Convention machinery entered a new phase, thanks to our colleagues in the Commission, who accepted that their work of filtering, investigating and reporting was best served if, failing a settlement of the case, it ended with a final, binding judgment. The figures speak for themselves. There was only one case before the Court when Wiarda joined it in 1966; there were 38 in June 1987, when he sat on it for the last time. No judgments were given between March 1962 and February 1967; there were 11 judgments in 1985, 17 in 1986, and 32 in 1987.

Wiarda not only witnessed that development but also actively contributed to it as a member of the Court, as its Vice-President and, finally, as its President. He was an outstanding President and a worthy successor to his predecessors, including René Cassin (the father of the Universal Declaration of Human Rights and winner of the Nobel Peace Prize, whose ashes we followed to the Panthéon in Paris in October 1987), Henri Rolin (who, together with Cassin, was one of the great figures of the European resistance movement against fascism and Nazism), Sir Humphrey Waldock (who left us, as did Hermann Mosler, for the International Court of Justice whose President he later became) and Giorgio Balladore Pallieri (whom Wiarda assisted as Vice-President for nearly four years). Under their chairmanship the Court’s case-law developed, not only in terms of the number of judgments but also as regards the interpretation and application of the Convention.



Gerard Wiarda.

It was in those years that the Court acknowledged that the Convention was a ‘living instrument to be interpreted in the light of present-day conditions’. Balladore Pallieri and Wiarda also established contact with the Inter-American Court of Human Rights and intensified our relationship with the Court of Justice in Luxembourg under its then President, Hans Kutscher ...

Having been elected President in 1981, after the sudden death of Balladore Pallieri, Wiarda, who was re-elected by his colleagues two years later, resigned from that office in May 1985. When he finally left the Court, he had participated in the adoption of more than three-quarters of all the judgments the Court had delivered at that time, and nearly half of those had been handed down by a Chamber or the plenary Court presided over by him. My colleagues will certainly agree that our case-law throughout those years was marked by President Wiarda, whose qualities of powerful and subtle legal reasoning, which had brought him to the highest judicial office in his own country, were of inestimable value for our young Court.

Wiarda’s competence as a jurist was coupled with a profound concern for the individual. He was one of those members of our Court who felt very early that there was

some inconsistency in giving the individual a right of petition but in excluding him when the proceedings entered the stage of adjudication. It is surely significant that the process of the applicant’s status before the Court, which was started as early as 1960, came to its culmination under Wiarda’s presidency ... We revised our Rules of Court in 1982 and gave the individual applicant the right to separate representation and hence direct participation in the proceedings. The next step – giving the individual applicant the right to bring his own case before the Court for decision – may be taken in a not-too-distant future, and I know that Wiarda will learn this with pleasure and satisfaction.

Wiarda was also convinced that the success of the Convention system would ultimately depend on whether it was accepted by the judiciary in the member States of the Council of Europe. It was thus logical that he was the one who insisted on the Court’s participation in the useful conferences of European constitutional courts. If we find today in the case-law of more and more supreme courts in western Europe a trend not only to apply the Convention but also to follow the European interpretation of it, we know that this has something to do with Wiarda ...



Rolv Ryssdal.

The effectiveness of the Convention system, which is today seriously hampered by the excessively long proceedings before the Commission and the Court, was Wiarda’s constant concern. Our efforts to improve our procedures and adapt our rules to the new situation were largely inspired by him, but he did not stop there. Taking up the idea put forward in 1985 by the Swiss government for a global reform of the control machinery, he, together with our former Vice-President Walter Ganshof van der Meersch, presented one year later in Neuchâtel a first and most ingenious plan for restructuring our cumbersome system. Their ideas and proposals for a permanent European Court of Human Rights will no doubt influence the work that is at present being carried out in this field by a governmental Committee of experts.

Rolv Ryssdal*
President of the Court, 1985–98

Rolv Ryssdal (1914–98)

Norwegian

- *Legal practitioner and judge*
- *Judge (1964–9) and President of the Norwegian Supreme Court (1969–84)*
- *Judge (1973–81), Vice-President (1981–5) and President (1985–98)*

From the point of view of the old European Court of Human Rights, Rolv Ryssdal was a man for his time – that is, the right man to be the President of the Court when he was, from 1985 to 1998.

Ryssdal’s first four predecessors as President were Lord McNair (British, 1959–65), René Cassin (French, 1965–8), Henri Rolin (Belgian, 1968–71) and Sir Humphrey Waldock (British, 1971–4). All four were impressive figures in their own right, occupying significant places in the history of international and European human rights law, but they had little opportunity to shape the history of the Court, given the paucity of cases coming before it during their terms of office. Ryssdal’s immediate predecessors were Giorgio Balladore Pallieri (Italian, 1974–80) and Gerard Wiarda (Dutch, 1981–5), who had been Presidents during a decade when the Court laid the jurisprudential foundations of many of the substantive and interpretative principles that still lie at the heart of its case-law. In the view of those who witnessed these presidencies from 1959, notably the emblematic and long-serving Registrar, Marc-André Eissen (Deputy Registrar 1966–8, Registrar

1968–94), who trained successive generations of Registry lawyers in the rigours of judgment drafting, Gerard Wiarda was the most accomplished lawyer and the most thoughtful legal mind with a vision of the Convention’s potential role in an evolving European democratic society to be President of the old Court. Wiarda’s brilliant intellect guided the Court during this period of jurisprudential creativity and ‘invented’ from the bland text of the Convention many of the notions and principles that are now taken for granted.

Ryssdal took over in 1985 as a new era was beginning. More cases were being referred to the Court, and there was more pressure on it to pay attention to the organization of its time and its resources and to pass judgments calling for the consolidation and development of case-law principles rather than their creation. Gerard Wiarda remarked on the occasion of his retirement and Rolv Ryssdal’s first election as President: ‘The easy days of my presidency are gone. Ryssdal is the man the Court needs now.’ Wiarda’s analysis was confirmed at the end of Ryssdal’s tenure in 1998 by Ryssdal’s successor as President, Rudolf Bernhardt:

His position is unique in the history of this Court and, I would think, that of any other international court or indeed of many national supreme courts. Rarely can one man have played such a predominant role in a system of justice, be it international or national ... I believe that in Rolv Ryssdal the European Court found the right man to lead it through this decisive period in its development.

Paul Mahoney
Registrar of the Court, 2001–5

and
Søren Prebensen
Head of Legal Division in the Registry of the Court

Rudolf Bernhardt (b.1925)

German

- *Law professor*
- *Judge (1981–92), Vice-President (1992–8) and President (1998)*

Rudolf Bernhardt was the last President of the former European Court of Human Rights (elected in 1998) and Rolv Ryssdal’s successor. He had been Vice-President of the Court since 1992.

Bernhardt studied law at Frankfurt University from 1948 to 1952. He got his doctorate of laws from Frankfurt University in 1955 and passed his second law examination to become an *Assessor* in 1956. He was a member of the Max Planck Institute for Comparative Public Law and International Law from 1954 to 1965 and worked as a visiting scholar at the Harvard Law School in 1959. He was appointed Professor in Public Law at Frankfurt University in 1965 and went on to become Head of the Faculty of Law from 1967 to 1968. He became a Director of the Max Planck Institute in 1970 as well as a Professor of Law at Heidelberg and Frankfurt Universities. He was also the general editor of the well-known and much-relied on *Encyclopedia of Public International Law* for many years.

Judge Bernhardt was elected to the Court in 1981 to take the place of Judge Hermann Mosler, who had been compelled to abandon his post as judge of the Strasbourg Court because of his increasing duties at the International Court of Justice. Writing in a *Festschrift* for Judge Bernhardt published in 1995, Rolv Ryssdal described him as a ‘product of what one might call the “professorial” tradition of the



Rudolf Bernhardt.

law, which finds particular expression in German culture’. He added: ‘He earned the respect of his colleagues by the way he placed that tradition and that culture at the service of the Court in Strasbourg.’

He was elected Vice-President of the Court in 1992, and Ryssdal summed up his professional qualities:

With his background as an eminent scholar in constitutional and public international law, Professor Bernhardt has been able to provide a valuable contribution to the collective analysis that the Court must carry out of the issues before it for adjudication ... Coming from the “scientific” branch of the law has not moulded Judge Bernhardt into a human rights theoretician divorced from the many-layered realities of the modern-day relationship between the State and its subjects. Nor has it made him blind to the need for a certain kind of balanced pragmatism in applying the standards of the European Convention on Human Rights to the complex situations of life in a democratic society.

In a Laudatio for his 80th birthday, his friend and admirer Judge Thomas Buergenthal of the International Court of Justice referred to his endearing modesty, devoid of all arrogance and pretension, and his youthful enthusiasm for life, for ideas and for scholarship.

Michael O’Boyle
Deputy Registrar of the Court

Luzius Wildhaber (b.1937)

Swiss

- *Law professor and judge*
- *Judge (1991–8) and President (1998–2007)*

Luzius Wildhaber studied in Basle (Bâle), Paris, Heidelberg, London and Yale. He finished his studies with a PhD in Basle, a JSD at Yale Law School and the bar examinations of the Canton of Basle-City.

Thus prepared, Wildhaber became professor at the University of Fribourg (Switzerland) and from 1977 at the University of Basle. His academic career was crowned first with a deanship, later the rectorship of that university. He has taught and held visiting professorships at many other universities, including Yale, Ottawa, Geneva, Istanbul, Kyoto and Sydney.



Luzius Wildhaber.

He began his practical career as judge at the Constitutional Court of the Principality of Liechtenstein. Later he was judge at the Administrative Tribunal of the Inter-American Development Bank and in various international arbitration tribunals. In 1991 he became a judge at the old European Court of Human Rights in Strasbourg and, from 1998, in the new Court, where he became President. Since his retirement in 2007 he has become Vice-President of the Court of Conciliation and Arbitration of the OSCE and President of the Administrative Tribunal of the Council of Europe.

Luzius Wildhaber has lectured in some 56 countries and has received many honorary decorations, including the Order of Merit of Lithuania, the Austrian Great Gold Badge of Honour with Sash and the Dutch Order of Oranje-Nassau. He is an Honorary Bencher of the Inner Temple in London and of the Society of King’s Inn in Dublin, and he has been awarded 12 honorary doctorates. He has researched and published widely, including on the relations between international and domestic law, Swiss constitutional law, human rights in general and the European Convention

on Human Rights in particular. For his 70th birthday in 2007 two *Festschriften* were published, one offered by his fellow judges at the Strasbourg Court and the other by his extensive ‘family’ of friends and colleagues.

After Luzius Wildhaber became the President of the European Court of Human Rights in 1998, he regularly visited member States, exhorting the judicial authorities to consider the case-law of the Strasbourg Court, and one anecdote sums up his approach. When he visited the Supreme Court of one east European State, he asked to visit its library so that he could see its collection of judgments of the Strasbourg Court. Unfortunately, only three or four judgments could be found on the shelves. Wildhaber implored the Supreme Court judges to obtain all judgments and consult them regularly in their daily work. Some years later, he again visited that Supreme Court and again asked to see the library and the collection of the Court’s judgments. Again, there were only a few judgments available, though now the explanation was given that other judgments were currently on loan with the Supreme Court judges in their offices. Again Wildhaber urged the judges to have regular recourse to the Strasbourg case-law. Imagine his delight when, during a third visit to that Supreme Court, he had hardly entered the building when he was whisked off to the library and shown row after row after row of judgments of the European Court of Human Rights in Strasbourg.

Mark E. Villiger
Judge at the Court

Jean-Paul Costa (b.1941)
French

- *Law professor and judge*
- *Judge (1998–2001), Vice-President (2001–7) and President (from 2007)*

Jean-Paul Costa received a diploma at the Institute of Political Studies in Paris in 1961, a master of laws at the Faculty of Law in Paris in 1962 and a diploma of superior studies in public law in 1964. He also studied at the National School of Administration (ENA) from 1964 to 1966. He was appointed an auditor at the *Conseil d’Etat* on 1 June 1966 and was rapporteur at the judicial section of the *Conseil d’Etat* in 1966–71, 1977–80 and 1987–9. He also served as chairman of the Chamber of the judicial section of the *Conseil d’Etat*

Jean-Paul Costa.

from May 1993 to March 1998. He was elected to the Court in 1998 and was President of Section from 2000 until 2007 and Vice-President of the Court from 2001 until 2007.

Judge Costa has also been a professor at the International Institute of Public Administration (1985–9) and Associate Professor at the Universities of Orléans (1989–92) and Paris I (Panthéon-Sorbonne, 1992–8). From 1981 to 1984 he was the political Secretary of the French Minister of Education, and in 1985 he led the French delegation during the negotiation of the treaty between France and the United Kingdom for the Channel Tunnel (Canterbury Treaty). Among his many distinctions he is an Honorary Bencher of the Inner Temple in London and a Commandeur of the Légion d’Honneur. He has also received honorary doctorates from the Universities of Bucharest, Košice and Masaryk de Brno.

He has been President of the Court since 19 January 2007 and was the principal instigator of the Interlaken Conference on the future of the Court in February 2010, setting out the issues to be discussed by the States in his Memorandum of 3 July 2009.

Michael O’Boyle
Deputy Registrar of the Court

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WHAT DOES IT TAKE TO BE A GOOD PRESIDENT?
ROLV RYSSDAL AS A CASE-STUDY

The Presidency and the Role of the Court

During Ryssdal’s long presidency the jurisprudential foundations laid in the Court’s preceding pioneering period were built on to construct a comprehensive case-law across practically the full range of the Convention’s rights and freedoms, a case-law that did not, of course, fall from the blue sky but that was shaped by the more voluminous jurisprudence on the Convention existing in the reports and admissibility decisions of the European Commission of Human Rights and, especially, by the submissions of its delegates, acting as independent, impartial *amici curiae* of the Court, in cases referred from the Commission to the Court.

It was also largely under his influence as President that the former Court consolidated its method of international judicial review of democratic national action under the Convention, based on a conception of its own role vis-a-vis that of the national authorities. It is no secret that this conception found its expression through the doctrines of autonomous interpretation, dynamic or evolutionary interpretation and the margin of appreciation. As one of the justifications for the margin of appreciation, Ryssdal set great store by the principle of subsidiarity. As he always stressed, the primary responsibility for securing the Convention rights and freedoms at national level lay with the national legislative, executive and, in particular, judicial authorities. He believed it was essential to establish a constructive partnership of cooperation between, on the one hand, the European Court and, on the other hand, national supreme and constitutional courts, which assumed the role of final adjudication at national level before disputes reached the European level.

Another important dimension of judicial cooperation instigated by Ryssdal was in relation to other international or supranational tribunals dealing with human rights issues, notably the European Court of Justice in Luxembourg and the Inter-American Court of Human Rights in San José, Costa Rica, parallel

Right: Bronze bust of Rolv Ryssdal by Nils Aas – a donation by Norway.

to which the case-law of these two courts increasingly came to be cited in the Strasbourg Court’s judgments. In addition, Ryssdal was a strong advocate of the accession of the European Community to the European Convention on Human Rights in order to fill the legal void created by the fact of the Community’s supranational institutions not being directly responsible under the Convention, to avoid the risk of a two-speed Europe of human rights developing and to ensure a unified and consistent framework for the protection of human rights in Europe.

This notion of judicial dialogue was further reflected in the public relations policy Ryssdal pursued in the name of the Court. This was geared towards receiving in Strasbourg delegations of members of national supreme courts and constitutional courts and other international courts for informal exchanges on the Convention case-law and procedure. He also undertook an impressive agenda of participation in conferences and seminars across Europe at which he propounded the importance of shared responsibility for human rights protection and active collaboration between national courts and the European Court.

On the internal front Ryssdal was indefatigable in defending the Court’s operational and functional independence vis-a-vis the Council of Europe’s political and administrative instances, a task that was easier to accomplish with some Secretaries General and Deputy Secretaries General (notably Catherine Lalumière and Peter Leuprecht) than others. He understood the conflicting constraints under which the Secretary General had to operate, but he never conceded the principle that the Court, not the Secretary General, was ultimately responsible for deciding what budgetary requests were to be submitted to the Committee of Ministers in its name.

The Presidency and the Procedural Framework

When Ryssdal was first elected President of the Court in 1985 he had been its Vice-President since 1982, a member since 1973 and Chief Justice of Norway from 1969 to 1984. Before joining the Norwegian Supreme Court in 1964, he had had a distinguished career as a State prosecutor in post-war treason cases, as a Supreme Court advocate in civil and criminal cases and then as Secretary of State in the Ministry of Justice. He was a judicial man *par excellence*, a professional judge with practical experience of the administration of justice in its multiple facets. During the Second World

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War he had been part of the resistance movement and had been imprisoned during the German occupation. Although he never spoke about it, this experience must also have had a bearing on what he expected and wanted of European human rights protection under the Convention.

It is hardly surprising that he relentlessly campaigned in favour of a wholly judicial mechanism for adjudicating on human rights complaints at an international level rather than one tinged with quasi-administrative and political characteristics as

provided for under the original 1950 version of the Convention. And it was during Ryssdal's presidency that the process, which until then had been rather slow, of rendering the Strasbourg procedure more judicial gained real momentum. More and more cases were referred to the Court rather than going by default to the Committee of Ministers (of the Council of Europe) as the final adjudicator, with an increase from the dismal (even then) average of only one case a year during the first 15 years of the Court's existence to 60 a year from the mid-1990s onwards.

Nevertheless, while the former Court was normally able to hold a hearing and to deliver a judgment within about one year from when the case had been referred to it, Ryssdal was particularly concerned that on average it took as long as five years from the initial lodging of the application with the Commission to its final determination by the Court or the Committee of Ministers. He was among those who were convinced that it was necessary to shorten the length of the proceedings by simplifying the overly cumbersome Strasbourg procedure and to make the system fully judicial. This gradual development came to its completion when Protocol No. 11 came into force on 1 November 1998, with the removal from the Committee of Ministers of its adjudicatory function and the replacement of the former part-time Commission and Court by a full-time single Court, dealing with all cases brought under the Convention. Whatever one now thinks of the overall merits and adequacy of the reform ushered in by Protocol No. 11, this welcome judicialization would not have materialized without governments and the legal community having gained confidence and trust in the Strasbourg Commission and Court. When the movement for a single permanent Court was launched it had been impossible to foresee that in a post-communist Europe the continuing explosion in the number of applications being lodged, resulting in the current difficulties facing the Court, which is slowly suffocating under an unmanageable workload, would retroactively provide support for the stance of those who had earlier favoured the continuance in some form or another of a two-tier system.

In the last years of his life Ryssdal himself did not hide his disquiet about the limits of the Protocol No. 11 reform in the changed context of a less homogeneous Convention community in excess of 30 States, to the point of evoking the necessity for adaptations, notably as regards the conditions and procedures for determining the admissibility of applications.

The Presidency and Court Administration

During Ryssdal's tenure the Court's workload expanded enormously and its internal functioning became more professionalized. In particular, an organizational discipline was progressively instilled in order to enable the Court, still a semi-permanent body, to cope with the increasing work. Without going into technical detail, in today's terms his presidency saw the introduction of a case management system, albeit one that would nowadays be regarded as somewhat rudimentary. Ryssdal thus brought to his presidency not only his judicial vision of what should be the substantive impact of the Convention on the participating democratic societies, but also his practical understanding of the changes needed for organizing the work

and internal judicial practice of a busy court, the front-line responsibility for conceiving and implementing such changes falling, of course, on the Registrars and Deputy Registrars with whom he worked, with Herbert Petzold (Deputy Registrar 1975–94, Registrar 1995–8) deserving special mention.

Presiding at Meetings

A key element in Ryssdal's effective role in presiding over the proceedings was his complete mastery of the case file. When given the floor at deliberations, the national judge in particular would inevitably experience a certain amount of trepidation, being acutely aware that at any moment an attentive President might raise questions on the factual circumstances of the case or the relevant national law. While seeing his role as being one of leading the Court to as consensual a conclusion as possible rather than imposing his own point of view, he was also able to stay firm on his position when a proposed course of action went against his convictions, integrity being for him a higher value than popularity. When there was doubt on a point requiring clarification, he would seek assistance. His eyes would swivel round the table until they landed on the person from whom he expected a clear, accurate and immediate answer, and his stentorian voice called that person's name. Whether you were a member of the Court or of the Registry, you had better be prepared to respond competently.

The President and the Person

Ryssdal's energetic voice could be easily discerned from afar, as could his silhouette – he was a tall, distinguished gentleman with silver-white hair, usually wearing a white shirt and a sober tie with an elegant three-piece dark blue suit. He always walked determinedly at an athletic pace, his eyes observing vividly through a solid pair of glasses. He would salute you with a firm handshake and grab your arm while saying a few friendly words before moving on. Although continually focused on his responsibilities as the Court's President, Ryssdal never overlooked his fellow judges and staff. A family man himself, he showed genuine interest and concern for the well-being of his colleagues and their families in Strasbourg. Today one would look back at those years as a time when the Court and its Registry (both then modestly sized) was like an extended family.

It was a pleasure to receive Ryssdal as a supper guest. He was not averse to entertaining with stories and anecdotes and would give a vibrant speech in the traditional Nordic manner. He was even on occasion known to sing a song in honour of the Swedish judge Elisabeth Palm, with the Secretary to the Commission, Hans Christian Krüger, providing a musical accompaniment on

the piano. Scenes like this, as well as the judge presiding over a busy Court and representing it on formal occasions, figure among the main images that Rolv Ryssdal has left behind him. As Luzius Wildhaber put it at the ceremony for the presentation of the *Studies* in memory of Rolv Ryssdal in June 2000, ‘distinction and simplicity, friendship and firmness, humanism and intellectual rigour, hard work and relentless commitment’, together with ‘a particularly keen sense of where the Convention was going and where he wanted it to go ... these ... were the qualities that made him such an outstanding President’. Rolv Ryssdal left his mark not only on the institution, its case-law and its procedures (its institutional history) but also on the people – fellow judges and Registry staff – who worked with him in the Convention system. The ideas and values he stood for and tried to promote live on in them.

From the foregoing it can be deduced that, in the present writers’ view, the answer to the question posed in the title of this

contribution , ‘What Does it Take to be a Good President of the Court’, is that there is no single formula to define the qualities of a good President. There are, of course, necessary core qualities – a fine legal mind, a balanced sense of justice, leadership, authority, integrity, selflessness and an ever-readiness to stand up for the independence of the Court – but it is also necessary to have abilities that are dictated by the challenges facing the Court at the relevant time. Rolv Ryssdal is far from being the only outstanding personality to have left a distinctive mark as President of the Court, but, to quote again his successor, Rudolf Bernhardt, Rolv Ryssdal was the ‘right President at the right time’. May the Court be as fortunate in this respect in the future.

Paul Mahoney
Registrar of the Court, 2001–5
and
Søren Prebensen
Head of Legal Division in the Registry of the Court



President Ryssdal, accompanied by Jonathan Sharpe, delivering the judgment in *Lithgow and Others v. the United Kingdom* (1986).

