JUDGES AND JUDGEMENTS : 25 YEARS JUDICIAL ACTIVITY OF THE COURT OF STRASBOURG

BY

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The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted on 4 November 1950 in the framework of the Council of Europe (1). The Council of Europe was founded in 1949 with the aim « to achieve a greater unity between its Members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage ». The preamble of the European Convention states that « one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms ». The preamble refers also to the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948. It took the United Nations 18 more years before the adoption by the General Assembly on 16 December 1966 of the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. In the meanwhile the Members of the Council of Europe adopted the European Convention, resolved as they were « to take *the first steps* for the collective enforcement of *certain of the Rights* stated in the Universal Declaration ».

(1) On the European Convention on Human Rights in general, see : CASTBERG, F., *The European Convention on Human Rights*, Leyde, Sijthoff, 1974, 198 p; COUNCIL OF EUROPE, *Digest of Strasbourg Case-Law Relating to the European Convention on Human Rights*, Köln, Carl Heymanns Verlag, 4 vol., 1984-1985; ERCMAN, S., *European Convention on Human Rights, Guide to Case Law*, Vienna, 1981, 528 p; FAWCETT, J.E.S., *The Application of the European Convention on Human Rights*, Oxford, Clarendon Press, 1969, 368 p.; JACOBS, F. G., *The European Convention on Human Rights*, Oxford, Clarendon-Press, 1975, 286 p; MORRISON, C., *The Developing European Law of Human Rights*, Leyde, Sijthoff, 1967, 247 p.; NEDJATI, M., *Human Rights under the European Convention* Amsterdam, North Holland Publishing Company, 1978, 298 p.; ROBERTSON, A. H., *Human Rights in Europe*, Manchester, University Press, 2 nd Ed., 1977; see also COUNCIL OF EUROPE, *Bibliography relating to the European Convention on Human Rights*, Strasbourg, 1978, 173 p. and the selective bibliography in the *Yearbook of the European Convention on Human Rights*.

The European Convention entered into force on 3 September 1953 when 10 Member States of the Council of Europe had deposited their ratifications (Article 66, par. 2). At present all 21 Members of the Council of Europe are parties to the European Convention (2). Three organs are in charge of the implementation of the European Convention on Human Rights : the European Commission on Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe. The Committee of Ministers, which consists of one Minister of each Member State of the Council of Europe, decides by a majority of two-thirds of its members whether there has been a violation of the Convention in those cases sent to it by the Commission and not referred to the European Court (3).

The European Commission of Human Rights (4) consists of a number of members equal to that of the parties to the European Convention (at present 21) (Art. 20) and elected for six years by the Committee of Ministers from a list of names drawn up by the Bureau of the Consultative Assembly (Art. 21) (5). Any State party to the European Convention may

(2) Austria (A), Belgium (B), Cyprus (CY), Denmark (DK), Federal Republic of Germany (F.R.G.), France (F), Greece (GR), Iceland (IS), Ireland (IRL), Italy (I), Liechtenstein (FL), Luxembourg (L), Malta (M), Netherlands (NL), Norway (N), Portugal (P), Spain (E), Turkey (TR), United Kingdom (GB), Sweden (S), Switzerland (CH). Some Members were rather late in becoming parties to the European Convention : France, a founding member of the Council of Europe, only ratified the European Convention on 3 June 1974, and also Switzerland, which became a Member on 6 June 1963, ratified the European Convention on 28 November 1974. The same year too, Greece which had withdrawn from the Council of Europe and had denounced the European Convention on 12 December 1969, reapplied for membership and became again a party to the European Convention on 28 September 1974. Portugal, Spain and Liechtenstein, which became Members of the Council of Europe respectively on 22 November 1976, 24 November 1977 and 23 November 1978, became parties to the European Convention respectively on 9 November 1978, on 4 October 1979 and on 8 September 1982.

(3) See HIGGINS, R., « The Execution of Decision of Organs Under the European Convention on Human Rights », *R.H.D.I.*, 1978, pp. 1-39; MODINOS, P., « Les pouvoirs de décisions conférés au Comité des Ministres du Conseil de l'Europe par l'art. 32 de la Convention européenne des Droits de l'Homme », in *Mélanges Henri Rolin*, Paris, Pedone, 1964, pp. 196-216; ROBERTSON, A. H., « The guarantees by the institutional machinery of the Convention — the Committee of Ministers », in *Privacy and Human Rights*, Manchester, Univ. Press., 1973, 324 p.; WIEBRINGHAUS, H., « Jurisprudence et procédure du Comité des Ministres du Conseil de l'Europe en vertu du 1er paragraphe de l'art. 32 de la Convention européenne des Droits de l'Homme », in *Mélanges Modinos*, Paris, Ed. Pedone, 1968, pp. 454-478.

(4) The Commission hold its first session on 12 July 1954. On the work and practice of the Commission, see : KRÜGER, H. C., « The European Commission on Human Rights », *Human Rights L. J.*, 1980, pp. 66-87; MONCONDUIT, Fr., *La Commission européenne des droits de l'homme*, Leyde, 1965, 559 p.; SOERENSEN, M., « L'experience d'un membre de la Commission », HUMAN RIGHTS J., 1975, pp. 329-342.

(5) On 31 December 1984 the Commission was composed as follows : C. A. Norgaard (DK) (*President*), G. Sperduti (I) (*1st Vice-President*), J. A. Frowein (F.R.G.) (2nd Vice-President), F. Ermacora (A), M. Triantafyllides (CY), E. Busuttil (M), A. S. Gözübüyük (TR), H. G. Schermers (NL), G. Jörundsson (IS), J.-C. Soyer (F), G. Tenekides (GR), S. Trechsel (CH), B. Kiernan (IRL), A. Weitzel (L), H. Danelius (S), G. Batliner (FL), A. E. Anton (GB), J. Campinos (P), H. Vandenberghe (B), G. H. Thune (N), J. A. Carrillo (E). For the biography of the members of the Commission, see the *Yearbook of the European Convention on Human Rights*. According to Article 3 of Protocol N° 8 of 19 March 1985 (*European Treaty Series*, 118, Strasbourg, Council

refer to the Commission any alleged breach of the provisions of the Convention by another State party (Art. 24). Moreover 17 States — all States parties to the European Convention with the exception of Cyprus, Greece, Malta and Turkey — have recognized the competence of the Commission to receive petitions from « any person, non-governmental organization or group of individuals » claiming to be the victim of a violation by one of those States (Art. 25) (6). Some of the early States members of the Council were late in recognizing the right of individual petition : the United Kingdom in 1966, Italy in 1973 and France only in 1981.

Until now, only 6 inter-state cases have been filed with the Commission :

1) petitions in 1956 and 1957 from Greece against the United Kingdom concerning events in Cyprus (7);

of Europe, 1985, pp. 1-9). Article 23 of the Convention shall be supplemented by the following sentence : « During their term of office they shall not hold any position which is incompatible with their independance and impartiality as members of the Commission or the demands of this office ». In Resolution 802 (1983) on the candidates for membership of the European Commission of Human Rights, the Parliamentary Assembly of the Council of Europe urged national delegations in the Assembly to put forward candidates who have sufficient time to devote to the duties that membership of the Commission implies and who do not hold any office incompatible with the principle of the separation of powers and instruct its Bureau to consult its Legal Affairs Committee whenever there are doubts about the suitability on any candidate (H (84) 3, 732).

(6) CASSESE, A., « Le droit de recours individuel devant la Commission européenne des Droits de l'Homme », in *Les clauses facultatives de la Convention européenne des droits de l'homme*, 1974, p. 45; DE SALVIA, M., « Quelques réflexions sur la nature et le caractère du droit de recours prévu à l'art. 25 de la Convention européenne des Droits de l'Homme », in *Les clauses facultatives de la Convention européenne des droits de l'homme*, 1974, p. 69; MÜLLER-RAPPARD, E., « Le droit d'action en vertu des dispositions de la Convention européenne des droits de l'homme », *R.B.D.I.*, 1968, pp. 85-117.

On the admissibility of the petitions, see : DANELIUS, H., « Conditions of Admissibility in the Jurisprudence of the European Commission of Human Rights », *Human Rights J.*, 1969, p. 284; DRZEMCZEWSKI, A., « The European Commission of Human Rights and Inadmissible Applications against the United Kingdom », *E.L.R.*, 1978, pp. 14-26; MIKAELSEN, L., *European Protection of Human Rights, The Practice and procedure of the European Commission of Human Rights on the Admissibility of Applications from Individuals and States*, Alphen aan den Rijn, Sijthoff, 1980, 273 p.; WEIL, G. L., « Decisions on inadmissible applications by the European Commission of Human Rights », *A.J.I.L.*, 1960, pp. 874-881.

On the exhaustion of local remedies : CANCADO TRINIDADE, A.A., « The burden of proof with regard to exhaustion of local remedies in international law », *Human Rights J.*, 1976, pp. 81-122; GRILLO-PASQUARELLI, E., « The question of exhaustion of domestic remedies in the context of the examination of admissibility of an application to the European Commission of Human Rights, in A. H. ROBERTSON (Ed.), *Privacy and Human Rights*, Manchester, 1973, 332 p.; GUINAND, J., « La règle de l'épuisement des voies de recours internes dans le cadre des systèmes internationaux de protection des droits de l'homme », *R.B.D.I.*, 1968, pp. 471-484; SULLIGER, D., *L'épuisement des voies de recours internes en droit international général et dans la Convention européenne des droits de l'homme*, Lausanne, Imp. des Arts et Métiers, 1979, 201 p.; WIEBRINGHAUS, H., « La règle de l'épuisement préalable des voies de recours internes dans la jurisprudence de la Convention européenne des Droits de l'Homme », *A.F.D.I.*, 1959, pp. 685-704.

(7) *Greece against United Kingdom*, Appl. N° 176/56, *Yb. E.C.H.R.*, 1959, vol. 1, pp. 128-131; *YB.E.C.H.R.*, 1960, vol. 2, pp. 175-178, 183-187; Appl. No. 299/57, *YB.E.C.H.R.*, 1960, vol. 2, pp. 178-181; 187-199.

2) a petition in 1960 from Austria against Italy concerning events in Alto-Adige (8);

3) petitions in 1967 and 1968 from Denmark, Norway, Sweden and the Netherlands and in 1970 from Denmark, Norway and Sweden against Greece for events during the colonel's regime (9);

4) a petition in 1971 from Ireland against the United Kingdom for events in Northern-Ireland (10);

5) petitions in 1974, 1975 and 1977 from Cyprus against Turkey for events in the Turkish occupied part of Cyprus (11);

6) a petition in 1982 from Denmark, Norway, Sweden, the Netherlands and France against Turkey for events under the military regime in Turkey (12).

Only the case of Ireland against the United Kingdom was referred to the Court which in its judgment of 18 January 1978 decided that the United Kingdom had violated article 3 of the European Convention by inflicting inhuman treatment on prisoners in Northern Ireland (13).

(8) *Austria against Italy*, Application N° 788/60, *YB. E.C.H.R.* 1961, vol. 4, p. 116; *Collection of decisions*, Strasbourg, 1962, vol. 7, pp. 23-74.

(9) *Denmark, Norway, Sweden and the Netherlands against Greece*, Appl. Nos 3321, 3322, 3323, 3344/67, *YB.E.C.H.R.* 1968, vol. 11, pp. 690-731; *Collection of decisions*, Strasbourg, 1968, vol. 26, pp. 92-115; *Collection of decisions*. 1968, vol. 26, pp. 80-111; Appl. N° 4448/70, *YB.E.C.H.R.*, 1970, vol. 13, pp. 108-137. MERTENS, P., « Les organes du Conseil de l'Europe et le concept de « démocratie » dans le cadre des deux affaires grecques », *R.B.D.I.*, 1971, vol. 7, pp. 118-47.

(10) *Ireland against United Kingdom*, Applications N^{os} 5310/71 and 5272/72, *YB.E.C.H.R.* 1972, vol. 15, p. 76. See also infra note 13.

(11) *Cyprus against Turkey*, Appl. N^{os} 6950/75 and 6780/74, *D.R.*, 1975, vol. 2, pp. 125-151; Appl. 8007/77, *D.R.*, 1979, vol. 13, p. 85. DORITOU, O., « The European Convention on Human Rights and the case of Cyprus v. Turkey », *Topical Law*, 1981, pp. 32-55. The Commission adopted its report on the third petition of Cyprus against Turkey in October 1983.

(12) *Denmark, France, the Netherlands, Norway and Sweden against Turkey*, Applications N^{os} 9940-9944/82 (DH (84) 8, par. VII (a). Application was declared admissible in December 1983. See also *Press Release of the Council of Europe* (83) 89 and (84) 43. The petitions from Denmark, Norway, Sweden, the Netherlands and France against Turkey were declared admissible in December 1983. A delegation of the Commission visited Turkey from 27 January till 2 February 1985 on an invitation of the Turkish Government.

(13) ANDREWS, K., « The Northern Ireland case before the Court », *E.L.R.*, 1978, pp. 250-260; BONNER, D., « Ireland v. United Kingdom », *I.C.L.Q.*, 1978, pp. 897-907; BOYLE, K. & HANNUM, H., « Ireland in Strasbourg : An Analysis of Northern Irish Proceedings before the European Commission on Human Rights », *The Irish Jurist*, 1972, p. 329; DONOGUE, D. E., « Human rights in Northern Ireland : Ireland v. the United Kingdom », *B.C.I.C.L.R.*, 1980, pp. 2 : 377-432; DOSWALD-BECK, L., « What does the prohibition of « Torture or inhuman or degrading treatment or punishment » mean? The interpretation of the European Commission and Court of Human Rights », *N.I.L.R.*, 1978, pp. 24-50; DUFFY, P. J., « Article 3 of the European Convention on Human Rights », *I.C.L.Q.*, 1983, pp. 316-346; HARTMAN, J. F., « Derogation from Human Rights Treaties in Public Emergencies », *Harv. I. L.J.*, 1981, pp. 1-52; MARTIN, P.-M., « A propos de l'article 3 de la Convention européenne des droits de l'homme. L'arrêt de la Cour européenne des droits de l'homme dans l'affaire Irlande c. Royaume-Uni », *R.G.D.I.P.*, 1979, pp. 104-125; O'BOYLE, M., « Torture and Emergency Powers under the European Convention on Human Rights : Ireland v. the United Kingdom », *A.J.I.L.*, 1977, pp. 674-706; O'BOYLE, M., « Emergency situations and the protections of human rights : a model derogation

On the other hand, the Commission had, at the end of 1984, registered 11.295 individual petitions and had taken 10.566 decisions. 9.262 applications are declared inadmissible or struck off the list de plano, and 924 applications are declared inadmissible or struck off the list after communication to the respondent Government. As a result 380 petitions (or 3,59 % of the total number of petitions decided upon before the end of 1984) were declared admissible. At the end of 1978, the corresponding figures were 190 petitions (or 2,35 %) of a total of 8.072 requests then decided upon by the Commission. While still moderate, it does mean a notable increase over the last five years (14). With respect to 30 of those petitions the Commission reached a friendly settlement.

I. — THE JUDGES OF THE EUROPEAN COURT OF STRASBOURG

The European Court on Human Rights consists of a number of judges equal to that of the Members of the Council of Europe (at present also 21) (Art. 38) and elected for nine years by the Consultative Assembly from a list of persons nominated by the Members of the Council of Europe (Art. 39). With 21 judges (15), the European Court of Strasbourg is the largest international court. The Inter-American Court of Human Rights in Costa Rica has 7 judges, the Court of Justice of the European Communities in Luxembourg has 11 judges and the International Court in The Hague has 15 judges (16). Before taking up his duties, each elected

provision for a Northern Ireland Bill of Rights », *NO. IRE. L. Q.*, 1977; PELLOUX, R., « L'affaire irlandaise et l'affaire Tyrer devant la Cour européenne des Droits de l'Homme », *A.F.D.I.*, 1978, pp. 379-402; SPJUT, R. J., « Torture under the European Convention on Human Rights », *A.J.I.L.*, 1979, pp. 267-272.

(14) Because of that increase in the workload of the Commission, the establishment of chambers and committees is envisaged in Article 1 of Protocol 8.

(15) On the judges of the Court of Strasbourg, see : EISSEN, M.-A., « La Cour européenne des droits de l'homme », *Bull. de l'Association pour la fidélité à la pensée du Président René Cassin*, Paris, 1983, n° 54, pp. 271-367 (pp. 275-279); GERALD FITZMAURICE, « Strasbourg and the Hague », *Studi in onere di Giorgio Balladore Pallieri*, Milan, 1978, vol. 2, pp. 280-305; GANSHOF VAN DER MEERSCH, W. J., « René Cassin, juge international », *René Cassin Amicorum discipulorumque liber*, Paris, Pedone, 1969, pp. XXXV-LI; MORRISON, C., *The Dynamics of Development in the European Human Rights Convention System*, The Hague, Nijhoff, 1981, 175 p.; VANDEN BOSCH, Y., « De Rechters van het Hof van Straatsburg », *R.W.*, 1982-83, col. 193-222.

(16) On the judges of the International Court of Justice, see : LORD JUSTICE DENNING, « Independence and impartiality of the Judges », *South African L.J.*, 1954, pp. 345-358; GOLDEN, J., « The World Court : The Qualifications of the Judges », *Colum. J. of L. & Soc. problems*, 1978, pp. 1-46; GROSS, L., « The International Court of Justice : consideration of requirements for enhancing its role in the International legal orders », *A.J.I.L.*, 1971, pp. 253-326; NSEREKO, D. D., « The International Court, impartiality and judges ad hoc », *Indian J.I.L.*, 1973, pp. 207-230; ROSENNE, S., *The International Court of justice*, Leyde, A. W. Sijthoff, S., 1961, pp. 118-147; ROSENNE, S., *The World Court — What it is and how it works*, Leyde, A. W. Sijthoff, 1963, pp. 48-49, pp. 61-63; ROSENNE, S., « The Composition of the Court », in GROSS, L., (ed.), *The Future of the International Court of Justice*, New York, Oceana Publications, 1976, vol. 1, p. 51; SAMORE, W., « World Court Statute and impartiality of the Judges », *Nebraska L. R.* 1955, pp. 618-629; RENAULT, J.-L., *Le juge ad hoc au sein de la Cour Internatio-*

judge declares that he will exercise his functions as a judge « honourably, independently and impartially » (17).

Only the Commission or a State party concerned may bring a case before the Court, if the State party concerned is subject to the compulsory jurisdiction of the Court (Art. 48). Only on 3 September 1958 had the required 8 States parties recognized the compulsory jurisdiction of the Court, which hold its first session on 23 February 1959. At present 19 States — all States parties to the Convention with the exception of Turkey and Malta — have recognized the jurisdiction of the Court in all matters concerning the interpretation and the application of the Convention (Art. 46).

From those 19 recognitions of the jurisdiction of the Court, 8 were made in the last 10 years : Italy (1973), France and Switzerland (1974), Portugal (1978), Greece and Spain (1979), Cyprus (1980) and Liechtenstein (1982). As a matter of fact, for some States parties there were many years between their ratification of the Convention and their recognition of the jurisdiction of the Court : 18 years for Italy (from 1955 to 1973) and Cyprus (from 1962 to 1980); 14 years for Sweden, 13 for the United Kingdom and 12 for Norway.

All 21 Members of the Council of Europe have a national at the European Court of Strasbourg, with the only exception of Liechtenstein, which nominated a Canadian national : Judge R. St. John Macdonald. Out of a total of 49 judges (18), there have been up to now two woman judges :

nale de Justice, thèse, Univ. d'Orléans, 1979, 466 p.; TOMUSCHAT, C., « International Courts and Tribunals with regionally Restricted and/or Specialized Jurisdiction », in *Max Planck Institute for Comparative Public and International Law (ed.), Judicial Settlement of International Disputes, an international symposium*, Berlin, Springer Verlag, 1974, p. 407.

(17) Article 39 of the Convention states that the candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence. According to Article 9 of Protocol N° 8, Article 40 of the Convention shall be supplemented by the following paragraph . « 7. The members of the Court shall sit in the Court in their individual capacity. During their term of office they shall not hold any position which is incompatible with their independence and impartiality as members of the court or the demands of this office ».

(18) For the Biography of the judges, see *Yb.E.C.H.R.*, (later YB.) 1958-59, vol. 2, pp. 137-152 : Judges Lord Mc Nair (GB); Cassin, R. (F), van Asbeck, Fr. (NL), Holmbäck, A. (S), Verdross, A. (A), Maridakis, G. (GR), Rolin, H. (B), Rodenbourg, E. (L), Ross, A. (DK), Wold, T. (N), McGonigal, R. (IRL), Balladore Pallieri, G. (I), Arnalds, E. (IS); Mosler, H. (D) and Arik, K. (TR) ; *YB.*, 1961, vol. 4, p. 93 : Judge *Zekia*, M. (CY) ; *YB.*, 1966, vol. 6, p. 55 : Judge Favre, A. (CH); *YB.*, 1968, vol. 8, pp. 45-47 : Judges Maguire, C. A. (IRL) and *Cremona*, J. (M) ; *YB.*, 1969, vol. 9, pp. 53-55 : Judges Sir Humphrey Waldock (GB), Bilge, S. (TR) and *Wiarda*, C. (NL) ; *YB.*, 1960, vol. 3, p. 22 : Sigurjonsson, S. (IS) ; *YB.*, 1974, vol. 14, pp. 53-57 ; Judges O'Donoghue, Ph. (IRL), Pedersen, I. (DK), *Vilhjalmsson, Th.* (IS), and Petren, S. (S) ; *YB.*, 1975, vol. 15, p. 47. Judges *Ryssdal, P.* (N(and Bozer, A. (TR) ; *YB.*, 1976, vol. 16, p. 57 : *Judge Ganshof van der Meersch*, W. J. (B) ; *YB.*, 1977, vol. 17, pp. 97-99 : Sir Gerald Fitzmaurice (GB) ; *YB.*, 1978, vol. 18, pp. 51-53 : *Judges Evrigenis, D. J.* (GR) and *Bindschedler-Robert, D.* (CH) ; *YB.*, 1980, vol. 20, pp. 67-75 : *Judges Lagergren, G.* (S), *Liesch, L.* (L), *Gölcüklü, F.* (TR), *Matscher. F.* (A) and *Pinheiro Farinha, J.* (P) ; *YB.*, 1981, vol. 21, pp. 51-53 : Judges *Garcia de Enterria, E.* (E) ; *YB.*, 1980, vol. 23, pp. 47-57 : Judges *Pettiti, L.* (F), *Walsch, Br.* (IRL), *Sir Vibcent Evans* (GB), and *R. Ronald St. John Macdonald* (CAN) ; *YB.*, 1981, vol. 24, p. 61 : Judges *Russo, C.* (I) and *Bernhardt, R.* (D). The Biography of Judge

Judge I. Pedersen (Denmark) from 21 January 1971 to 28 January 1980 and Judge D. Bindschedler-Robert (Switzerland), elected on 21 May 1975 and whose present mandate expires on 28 January 1989.

Most of the judges are reelected at least once. Judge R. Cassin (France), G. Balladore Pallieri (Italy), H. Mosler (F.R.G.), G. Wiarda (Netherlands) and J. Cremona (Malta) have been reelected twice. It can be said that the Court of Strasbourg shows a remarkable continuity in its composition. Within the 25 years since 1959 there has been an average of only 2,5 judges for each State party. The United Kingdom, Ireland, Turkey and Denmark have had 4 judges; France, Sweden, Luxembourg and Iceland 3 and Cyprus and Malta only 1 (respectively Judge M. Zekia and Judge J. Cremona) as well as Portugal, Spain and Liechtenstein who only recently became part to the Convention.

The average mandate of the judges has been slightly more than 9 years. Some judges, however, stayed exeeptionally long at the Court : Judges G. Balladore Pallieri (Italy) and H. Mosler (F.R.G.) for 22 years, Judge A. Verdross (Austria) for 18 years and Judges R. Cassin (France) and E. Rodenbourg (Luxembourg) for 17 years. Also Judge G. Wiarda (Netherlands), whose present mandate expires on 20 January 1986, sits already for more than 18 years and Judge M. Zekia (Cyprus), whose mandate should have expired on 25 September 1970, has not been replaced and has sit now for more than 23 years.

About two third of the judges were or are university professors and more than two out of five were or are national judges and as many were or are practising lawyers. About one third of the judges are public international lawyers, the rest being experts in different branches of national law or in comparative law. Three were or had been judges at the International Court of Justice in The Hague : Judges Lord McNair and Sir Gerald Fitzmaurice (United Kingdom) and Judge S. Petren (Sweden). Two judges became later Judges of the International Court of Justice : Judges Sir Humphrey Waldock (United Kingdom) and H. Mosler (F.R.G.).

Six judges were previously members of the European Commission : Judges C. Maguire (Ireland), S. Sigurjonsson (Iceland), Ph. O'Donoghue (Ireland), Sir Humphrey Waldock (United Kingdom), S. Petren (Sweden) and M. Sörensen (Denmark), who became also a Judge of the Court of Justice of Luxembourg. Some had been members of U.N. Human Rights organs : R. Cassin (France) and M. Sörensen (Denmark) of the U.N. Commission on human rights; M. Sörensen also of the U.N. Sub-Commission; Sir Vincent Evans (United Kingdom) from the Human Right Committee and R. St. John Macdonald (Canada, but nominated by Liechtenstein) from the Committee on the Elimination of Racial Discrimination (19).

Gersing, J. (DK) is not yet published. The names of the judges composing the Court as of 31 December 1984 appear in italics.

(19) In Recommendation 809 (1977) on the qualification of candidates for the European

The average age of the members of the Court in 1959 was 61 and reached 69 in 1970. At present the average age of the members of the Court is 65. The oldest judges have been R. Cassin (France), who was 89, and A. Verdross (Austria), who was 86. In 1977 the Consultative Assembly of the Council of Europe recommended the Committee of Ministers to request the States parties to nominate candidates of less than 70 years old who formally accept to resign at the age of 75 (20). At present the oldest judge is W. Ganshof van der Meersch (Belgium) who is 84. Two other judges are also more than 75 years old : Judge M. Zekia (Cyprus) is 82 and Judge G. Wiarda (Netherlands) is 78. The youngest is still Th. Vilhjalmsson (Iceland), who was 41 at the moment of his election, twelve years ago.

In dealing with cases, the Court shall be constituted in a Chamber of seven judges. The Chamber may, however, relinquish jurisdiction in favour of the plenary Court. Until now the Court dealt with 26 of the 67 cases in plenary session. A Chamber is composed of every judge who has the nationality of any State Party concerned (the « ex officio » judge), the President of the Court and five other judges called upon by a drawing of lots effected by the President.

If the judge called upon to sit as an « ex officio » judge is unable to sit or withdraws, the President invites that Party to appoint an « ad hoc » judge. Until now five « ad hoc » judges have been appointed : H. Rolin has been replaced by Baron L. Fredericq in the *De Becker Case* against Belgium (1962) and by A. Mast in the « *Linguistic* » *case* against Belgium (1967 and 1968); A. Verdross has been replaced by H. Schima in the *Neumeister Case* against Austria (1968); W. Ganshof van der Meersch had been replaced by A. Van Welkenhuyzen in the *Case of Le Compte, Van Leuven en De Meyere* against Belgium (1981 and 1982); Sir Vincent Evans has been replaced by R. Jennings in the *Case of X* against the United Kingdom (1981 and 1982).

Some judges did participate in a very high number of cases of the Court : Judge G. Wiarda (Netherlands) in 63 cases; Judge J. Cremona (Malta) in 45; Judge W. J. Ganshof van der Meersch (Belgium) in 42; Judge D. Bind-

Court of Human Rights [*Yb.*, 1977, vol. 20, pp. 77-79] the Parliamentary Assembly of the Council of Europe regretted that the candidates put forward have sometimes been civil servants and other persons who, by the very nature of their functions, were not independent of governments.

(20) Recommendation 809 (1977) on the qualification of candidates for the European Court of Human Rights recommends also that the Committee of Ministers invite the governments of the members States : 1 / to put forward candidates below the age of 70; 2) to ask every candidate to give a formal undertaking that he will, if elected, retire from the office of judge during the year in which he reaches the age of 75; and 3) not to put forward candidates who, by the nature of their functions, are dependent on government, without an assurance that they will resign their functions on election to the Court. The Parliamentary Assembly took in consideration that the convention unlike the regulations in force in most members States, does not specify an age-limit for judges of the Court and that, in the recent past, judges elected to the Court have on several occasions died without completing their nine-year term of office.

schedler-Robert (Switzerland) in 41; Judge Th. Vilhjalmsson (Iceland) and F. Gölcüklü (Turkey) in 40.

II. — SEPARATE OPINIONS AT THE EUROPEAN COURT OF STRASBOURG

Any judge who has taken part in the consideration of a case is entitled to annex to the judgment a separate opinion. Some judges delivered, individually or jointly, a great number of separate opinions. This is particularly the case for Judge M. Zekia (Cyprus) in 18 cases, Judges F. Matscher (Austria) in 14 cases, Judge J. Pinheiro Farinha (Portugal) in 13 cases, Judges D. Evrigenis (Greece), D. Bindschedler-Robert (Switzerland) and Th. Vilhjalmsson (Iceland) in 12 cases, Judges A. Verdross (Austria) and J. Cremona (Malta) in 10 cases, Judge W. J. Ganshof van der Meersch (Belgium) in 9 cases, and Judge Sir Gerald Fitzmaurice (United Kingdom) in 8 cases.

In order to appreciate the extent of the propensity of a particular judge to use his right of expressing separate opinions, which are generally dissenting of the majority, it is necessary to relate their number of separate opinions to the total number of judgments in which they participated. The examination of this relation shows as « great dissenters » : Judge Sir Gerald Fitzmaurice (United Kingdom) : 72 % (8 separate opinions out of 11 judgments); Judge T. Wold (Norway) : 60 % (6/10); Judge A. Verdross (Austria) : 58 % (10/17); Judge A. Holmbäck (Sweden) : 58 % (7/12); Judge M. Zekia (Cyprus) : 47 % (18/38); Judge Ph. O'Donoghue (Ireland) : 46 % (6/13); Judge F. Matscher (Austria) : 41 % (14/34); Judge F. Pinheiro Farinha (Portugal) : 39 % (13/33); Judge D. Evrigenis (Greece) : 35 % (12/34); Judge Th. Vilhjalmsson (Iceland) : 30 % (12/40); Judge A. Favre (CH) : 30 % (3/10); and Judge D. Bindschedler-Robert (Switzerland) : 29 % (12/41).

It is well known that in the International Court of Justice it is very exceptional that judges, who have the nationality of one of the parties to the dispute before the Court, vote against the position of their own government (21). This happens, however, very frequently in the European

(21) Extensive literature is available on the voting behaviour of the judges of the International Court of Justice of The Hague, but much less on the judges of the Court of Strasbourg. On separate opinions, and in particular on the voting behaviour of the judges of the International Court of Justice, see : ANAND, R. P., « The Role of individual and dissenting opinions in international adjudication », *I.C.L.Q.*, 1965, pp. 788-808; CHATTERJEE, S. K., « The role of the ad-hoc judge in the International Court of Justice », *Indian J.I.L.*, 1979, pp. 372-381; HEDRICH, R. W., *Conservative and progressive attitudes manifested by members of the I.C.J.*, Michigan, Univ. Microfilms Int'l, 1959, 389 p.; HENSLEY, T. R., « National Bias and the International Court of Justice », *Midwest J. of Pol. Science*, 1968, pp. 568-86; HIGGINS, R., « Non-Identification of the Majority and Minorities in the Practice of the I.C.J. », *Jus and Societas, Essays in Tribute to Wolfgang Friedmann*, The Hague, Nijhoff, 1979, pp. 134-150; HUSSAIN, I., *Le rôle dialectique des opinions dissidentes et individuelles dans le développement du droit international à*

Court of Strasbourg. Indeed, in more than half of the judgments the national judges voted at least on one point against their own government. This happens of course most frequently in judgments which are taken unanimously.

It happens also that when a minority votes in favour of a government, the national judge nevertheless votes with the majority against his own government. This happened with Judge R. McGonigal in the *Lawless Case* against Ireland (1961), Judge A. Verdross in the *Stögmuller Case* against Austria (1969), Judge H. Rolin in the *Case of De Wilde, Ooms and Versyp* against Belgium (1971), Judge G. Wiarda in the *Case of Engel and others* against The Netherlands (1976), Judge H. Mosler in the *Case of König* against the F.R.G. (1978), Judge Sir Vincent Evans in the *Case of Young, James and Webster* (1981), in the *Dudgeon Case* (1981) and in the *Malone Case* (1984) against the United Kingdom, Judge C. Russo in the *Case of Foti and others* against Italy (1981), Judge W. Ganshof van der Meersch in the *Marckx Case* (1979) and in the *Case of Albert and Le Compte* (1983) against Belgium, Judge Matscher in the *Skramek Case* (1984) against Austria, and Judge Lagergren in the *Skoogström Case* (1984) against Sweden. It also happened with one « ad hoc » judge : Judge A. Van Welkenhuyzen in the *Case Le Compte, Van Leuven and De Meyere* against Belgium (1981).

Unique is Judge W. Ganshof van der Meersch (Belgium), who found himself on a particular issue in two cases with the minority against his own government. This happened in the *National Union of Belgian Police Case* (1975) and in the *Marckx Case* (1979) against Belgium. It should be taken into account that Judge W. Ganshof van der Meersch, published only 9 dissenting opinions, while participating in 42 judgments.

On the other side of the spectrum, five judges happened at least on one issue to be the only dissenters in favour of their government. This happened to Judge O'Donoghue in the *Airey Case* against Ireland (1979) and in the *Case of Ireland* (as applicant) against the United Kingdom (1978), Judge Sir Gerald Fitzmaurice in the *Case of Ireland* (1978) and in the *Case of Tyrer* (1978) and Sir Vincent Evans in the *Case Campbell and Cosans* (1982) against the United Kingdom.

la C.I.J., Thèse, Univ. de Nice. 1974, 487 p.; HUSSAIN, I., *Dissenting and Separate Opinions at the World Court*, The Hague, Nijhoff, 1984, 335 p.; IL RO SUH, « Voting Behavior of national Judges in International Courts », *A.J.I.L.*, 1969, pp. 224-236; ISAIA, H., « Les opinions dissidentes des juges socialistes dans la jurisprudence de la Cour Internationale de Justice », *R.G.D.I.P.*, 1975, pp. 637-718; JHABVALA, F., « Declarations by Judges of the International Court of Justice », *A.J.I.L.*, 1978, pp. 830-855; JHABVALA, F., *The Development and Scope of individual opinions in the International Court of Justice*, Michigan, Univ. Microfilms International; JHABVALA, F., « The scope of individual opinions in the World Court », *N.Y.I.L.*, 1982, pp. 33-60; LACHS, M., « Le juge international à visage découvert (les opinions et le vote) », *Estudios de derecho internacional, Homenaje al Prof. Miaja de la Muela*, Madrid, 1979, pp. 939-953; MARTIN, J., *Les opinions dissidentes des juges occidentaux devant la Cour Internationale de Justice*, Thèse, Univ. d'Orleans, 1978, 439 p.; SERENI, A., « Les opinions individuelles et dissidentes des juges des tribunaux internationaux », *R.G.D.I.P.*, 1964, pp. 819-857; TANAKA, K., « Independence of international judges », *Communicazioni e Studi*, Milano, 1975, pp. 856-869.

It would not be justified, however, to consider those dissenting opinions as expressions of a lack of independence from the judges concerned. As said above, Judge Sir Vincent Evans voted on two other occasions (the *Case of Young, James and Webster*, the *Dudgeon Case* and the *Malone Case*) with a majority against his own government. Judge O'Donoghue joined on other issues in two above mentioned cases (the *Airey Case* and the *Case of Ireland*) an unanimous majority against the position of his government. Finally, Sir Gerald Fitzmaurice, who is relatively speaking the greatest dissenter (8 dissenting opinions, while participating in 11 judgments) agreed on at least one issue with the unanimous majority against his government in the *Golder Case* (1975) and in the *Case of Ireland* (1978) against the United Kingdom. On the other hand, it should be noted that Judge Sir Gerald Fitzmaurice voted also in all cases which concerned other Governments than his own in favour of that Government (the *National Union of Belgian Police Case* (1975), the *Marckx Case* (1979) and the *Van Oosterwijck Case* (1980) against Belgium; the *Case of Klass and others* against the Federal Republic of Germany (1978) and the *Guzzardi Case* against Italy (1980).

III. — THE JURISPRUDENCE OF THE EUROPEAN COURT OF STRASBOURG

If one examines the case-load of the European Court of Strasbourg, it is the steadily progressing increase of the number of cases which is most striking. At the end of December 1984 the Court had decided 67 cases (22). The best « clients » of the Court are Belgium (14 cases), the United Kingdom (12 cases), the Federal Republic of Germany (9 cases) and Italy (7 cases). Other cases concerned Austria (6 cases), the Netherlands and Sweden (each 5), Switzerland (4), Ireland and Denmark (each 2), and Portugal (1). For the total of the cases decided by the Court until now, the Court found violations in 11 of 12 cases against the United Kingdom, 9 out of 14 cases against Belgium, 6 out of 7 cases against Italy, 5 out of 5 cases against the Netherlands and 5 out of 9 cases against the Federal Republic of Germany. Other violations concerned Austria (4), Switzerland and Sweden (each 2), and Ireland and Portugal (each 1).

For a better understanding, the total case-load can be divided in two periods : a first period covers 18 years from the installation of the Court on 21 January 1959 till the end of 1976; the second period covers the last 7 years from 1978 on (no judgment was delivered in 1977). During the first 18 years of the existence of the Court, the Court decided only 17 cases (an average of about one case a year) and in only 7 cases (or 41 %) the

(22) At the end of December 1984 the Court had decided 87 judgments relating to 67 cases. One case can lead to different judgments : on preliminary exceptions, on the merits, on interpretation and/or on reparation.

Court found a violation of at least one provision of the Convention. During the last 7 years, the Court decided 50 cases (nearly the triple of the cases decided in the first period and an average of 7 cases a year) and found a violation of at least one provision of the Convention in 39 cases (78 % of the cases decided by the Court in that period and more than five times the number of violations found in the first period). Consequently, the average number of violations found by the Court is 17 times higher in the second than in the first period.

a. *The first period (1959-1976)*

The start of the Court of Strasbourg was indeed very slow. After a first case in 1960-1961 against Ireland (the *Lawless Case*) (23) in which the Court found no violation, because the right of derogation under Art. 15 was deemed duly exercised, and the *De Becker Case* against Belgium, which was struck of the list in 1962, because Belgium had changed its legislation on the point at issue, it took until 1967-1968 before the Court delivered its judgment in its third case. It was politically a very important case « *relating to certain aspects of the laws on the use of languages in education in Belgium* ». In that case, the Court found, with a narrow majority of 8 against 7, a violation by Belgium of Art. 2 of the First Protocol (the right to education) combined with Article 14 (the prohibition of discrimination) on a rather minor point (24).

In the years 1968-1971 the Court decided on 7 more cases, which were all related to the interpretation or application of the Articles 5 (detention) or 6 (fair trial) of the Convention. The Court found a violation in 4 of those cases : a violation of the right of an arrested or a detained person to a trial « within a reasonable time » (Art. 5, § 3) in the *Neumeister Case*, the *Stögmuller Case* and the *Ringeisen Case* against Austria and a violation of the right to a decision by a « court » (Art. 5, § 4) in the *Case of De Wilde, Ooms and Versyp* (the « vagrancy case ») against Belgium. The Court found no violation in the *Wemhoff Case* against the Federal Republic of Germany, the *Matznetter Case* against Austria and the *Delcourt Case* against Belgium (25).

(23) EISSEN, M.-A., « Le premier arrêt de la Cour européenne des Droits de l'Homme », *A.F.D.I.*, 1960, pp. 444-497; ROBERTSON, A. H., « The first case before the European Court of Human Rights — Lawless v. *The Government of Ireland* », *B.Y.B.I.L.*, 1060, pp. 343-354; ROBERTSON, A. H., « Lawless v. the government of Ireland (Second Phase) », *B.Y.B.I.L.*, 1961, pp. 536-547; VALENTINE, D. G., « The European Court of Human Rights, The Lawless Case », *I.C.L.Q.*, 1961, pp. 899-903.

(24) GORMLEY, W. P., « The development of international law through cases from the European Court of Human Rights : linguistic and detention disputes », *Ottawa L.R.*, 1968, p. 382; VERHOEVEN, J., « L'arrêt du 23 juillet 1968 dans l'affaire relative à certains aspects du régime linguistique de l'enseignement en Belgique », *R.B.D.I.*, 1970, pp. 352-382.

(25) DE SALVIA, M., « Privazione di libertá e garanzie del processo penale nella giurisprudenza della commissione e della corte europea dei diritti dell'uomo », *Rivista Italiana di diritto e procedura penale*, 1979, pp. 1403-1430; SPERDUTI, G., « De la notion de 'délai raisonnable' qualifiant la

In the following 7 cases decided in 1975 and 1976 the Court found only two violations : in the *Golder Case* against the United Kingdom (the right of a prisoner to institute legal proceedings against a prison officer — Art. 6, § 1 — and his right to correspondence with his sollicitor — Art. 8) and in the *Case of Engel and others* against the Netherlands (at issue was the applicability of Art. 5, § 1, and Art. 6, § 1, on military discipline proceedings).

It was, however, most important that this time the interpretation of other articles than those applicable in the criminal field was at stake. Besides Art. 8 (the right to correspondence) in the *Golder Case* against the United Kingdom, also Art. 10 (freedom of expression with respect to the prohibition of the circulation to schoolboys of an obscene « Little Red School Book ») in the *Handyside Case* against the United Kingdom (26), Art. 11 (the right of freedom of association) in the three trade union cases (the *National Union of Belgian Police Case* against Belgium (27) and the *Swedish Engine Driver's Union Case* and the *Case of Schmidt and Dahlström* against Sweden) and Art. 2 of the First Protocol (the right to education with respect to compulsory sexual education at school) in the *Case Kjeldsen, Busk Madsen and Pedersen* against Denmark.

b. *The second period (1978-1984)*

As far as the second period is concerned, the Court decided from 1978 until 1981 practically 5 cases each year and there was a finding of at least one violation in all cases with the exception of one case each year. In 1982 and 1983 the number of cases decided went even further up to 8 each year. There was « no violation » in only one case in 1982 (the *Adolf Case* against Austria) and in three successive cases decided at the end of 1983. For the year 1984, a further increase of cases can be noted; indeed in 1984 the Court decided in nearly the double of the cases of the years before. The number of cases decided went up to 15 and in 12 cases the Court found a violation.

The second period in the jurisprudence of the Court of Strasbourg started in 1978 with the politically very important *Case of Ireland* against the

durée de la détention préventive selon l'art. 5, par. 3 de la Convention européenne des Droits de l'Homme », *Human Rights J.*, 1975, pp. 865-868; TRECHSEL, S., « The right to liberty and security of the person — Article 5 of the European Convention on Human Rights in Strasbourg Case-Law », *Human Rights L.J.*, 1980, pp. 88-135; Mc CARTHY, Th. E., « The International Protection of Human Rights : Ritual or Reality ? The Vagrancy Cases before the European Court of Human Rights », *I.C.L.Q.*, 1976, pp. 261-291; VANWELKENHUYZEN, A., « Les respect des droits de l'homme et la législation belge pour la répression du vagabondage et de la mendicité », *R.B.D.I.*, 1973, pp. 338-372; VELU J., *L'affaire Delcourt : L'arrêt rendu le 17 janvier 1970 par la Cour européenne des droits de l'homme*, Brussels, Ed. Univ. Bruxelles, 1972, 79 p.

(26) FEINGOLD, C., « The little Red Schoolbook and the European Convention of Human Rights », *The Human Rights Review*, 1978, 21-47.

(27) BOSSUYT, M., Post-scriptum in *L'interdiction de la discrimination dans le droit international des droits de l'homme*, Brussels, Bruylant, 1976, 262 p. (pp. 233-240); SPERDUTI, G., « Le principe de non-discrimination dans la jouissance des droits de l'homme (A propos de l'affaire « Syndicat national de la Police Belge ») », *Human Rights J.*, 1976, pp. 71-80.

United Kingdom. It was the first inter-State case to reach the Court. In that case concerning the inhuman treatment of prisoners in Northern Ireland, as well as in the next case, the *Case of Tyrer* against the United Kingdom, concerning corporal punishment in the Isle of Man, the Court decided that the United Kingdom had violated Art. 3 of the Convention which prohibits inhuman treatment as well as degrading punishment (28).

The next three cases concerned the Federal Republic of Germany. The Court found a violation in the *Case of König* (a suspended medical doctor whose administrative appeals exceeded the « reasonable time » required by Art. 6, § 1) and in the *Case of Luedicke, Belkacem and Koç* (three immigrants who had to pay the interpreters fee in criminal proceedings contrary to Art. 6, § 3, al. *e*) (29). On the other hand, the Court found no violation in the *Case of Klass and others* concerning the bugging of a judge, a prosecutor and three lawyers (30).

In 1979 the Court decided in the *Sunday Times Case* with a narrow majority (11 against 9) that the rules of contempt as applied by the decision of the House of Lords granting an injunction to restrain publiciting an article dealing with thalidomide children was contrary to the freedom of expression recognized in Art. 10 of the Convention (31). In adopting a very liberal interpretation the Court decided in the *Marckx Case* that the distinctions between legitimate and illegitimate filiation in the Belgian civil code violate Art. 8 of the Convention (the right to respect for family life), Art. 8 combined with Art. 14 (the prohibition of discrimination) and Art. 1 of the First Protocol (the right to property) combined with Art. 14 (32). Moreover, the Court considered in the *Airey Case* that the difficulties encountered in the Republic of Ireland when conducting civil proceedings to obtain a separation constituted a violation of Art. 6, § 1, (the right to a fair hearing) and of Art. 8 (the respect for private and family life). The Court found no violation in the *Schiesser Case* against Switzerland.

(28) See supra note 17; ZELLICK, G., « Corporal punishment in the Isle of Mann », *I.C.L.Q.*, 1978, pp. 665-671.

(29) DUFFY, P. J., « Luedicke, Belcacem en Koc : A discussion of the case card of certain questions raised by it », *The Human Rights Review*, 1979, pp. 98-128.

(30) DUFFY, P. J., « The case of Klass and others : Secret surveillance of communications and the European Convention on Human Rights », *The Human Rights Review*, 1979, pp. 20-40; RAYMOND, J., « A contribution to the interpretation of Art. 13 of the European Convention on Human Rights », *The Human Rights Review*, 1980, pp. 64-75.

(31) DUFFY, P. J., « The Sunday Times case : Freedom of expression, contempt of court and the European Convention on Human Rights », *The Human Rights Review*, 1980, pp. 17-53; EVRIGENIS, D., « Recent case law of the European Court of Human Rights on art. 8 and 10 of the European Court on Human Rights », *Human Rights L.J.*, 1982, pp. 121-139; MALINVERNI, G., « Freedom of information in the European Convention on Human Rights and in the International Covenant on civil and political Rights », *Human Rights L.J.*, 1983, pp. 443-460; MUCHLINSKI, P. T., « The freedom of speech and the European Human Rights Convention : The Sunday Times case », *Topical Law*, 1979, p. 1.

(32) BOSSUYT, M., « L'arrêt Marckx de la Cour européenne des droits de l'homme », *R.B.D.I.*, 1980, pp. 53-81; RIGAUX, F., « La loi condamnée. A propos de l'arrêt du 13 juin 1979 de la Cour européenne des Droits de l'homme », *J.T.*, 1979, pp. 513-524.

In 1980 Belgium and Italy were concerned by two cases each. In the *De Weer Case* the imposition of a fine to a butcher, who had violated the Belgian economic price regulations, under the threat of closing his shop was considered a violation of Art. 6, § 1, of the Convention. The request of *Van Oosterwijck*, a transsexual who considered the refusal to modify his civil status a violation of his right to privacy, was declared inadmissible for non-exhaustion of local remedies (33).

In the *Artico Case* the lack of assistance given by the appointed lawyer was considered a violation by Italy of Art. 6, § 3, al. *e*, of the Convention. With a narrow majority of 10 against 8, the Court decided that putting *Guzzardi*, a well known mafioso, under special surveillance on the Island of Asinara was contrary to Art. 5, § 1, of the Convention.

In 1981, the two most important cases concerned the United Kingdom. In the *Case of Young, James and Webster* (34) the Court decided that the « closed shop » practice in the United Kingdom violated the freedom of association recognized in Art. 11 of the Convention. In the *Dudgeon Case* the Court decided that the criminal provisions in Northern Ireland against homosexual relations between consenting adult men violated the right to privacy recognized in Art. 8 of the Convention. The Court found no violation in the *Buchholz Case* against the Federal Republic of Germany.

The steadily increase of cases decided by the Court makes it necessary to examine most other cases under common headings. As it had been decided in the *Winterwerp Case* against the Netherlands in 1979, Art. 5, § 4 (the right to a decision by a « court » also applicable in case of internment into psychiatric institutions) has been found violated in the *Case of X* against the United Kingdom in 1981 and in the *Luberti Case* against Italy in 1984 (35). In the *Van Droogenbroeck Case* against Belgium the Court in 1982 had decided that the same provision was violated by Belgium in not providing for a decision by a « court » when keeping convicted persons at the disposal of the government after the completion of their term in jail.

Art. 5, § 3, was violated by the Netherlands in three cases concerning military disciplinary procedures decided in 1984. In the *Cases of De Jong, Baljet and van der Brink, van der Sluijs, Zuiderveld and Klappe* and *Duinhof and Duijf*, the applicants were not brought promptly before « an officer authorised by law to exercise judicial power ». The Court applied its inter-

(33) BUQUICCHIO-DE BOER, M., « Sex discrimination and the European Convention on Human Rights », *Human Rights L.J.*, 1985, p. 16; CONNELLY, A. M., « Homosexuals' Rights, a note on 7215 175 X v. UK (report of the European Commission on Human Rights, 12 October 1978) », *The Human Rights Review* 1980, p. 202; DOSWALD-BECK, L., « The meaning of the 'right to respect for private life' under the European Convention on Human Rights », *Human Rights L.J.*, 1983, pp. 283-309.

(34) DUFFY, P. J., « Closed shop case before the European Court of Human Rights », *New L.J.*, 1980, p. 922; O'HIGGINS, P., « The closed shop and the European Convention on Human Rights », *The Human Rights Review*, 1981, pp. 22-27.

(35) MUCHLINSKI, P. T., « Mental health Patient's Rights and the European Human Rights Convention », *The Human Rights Review*, 1980, pp. 90-116.

pretation given earlier in 1979 in the *Case Schiesser* against Switzerland. The Court decided in the same way in the *Case of McGoff* against Sweden in 1984. In the same year the Court decided with a very narrow majority (4 votes to 3) to strike the *Case of Skoogström* against Sweden. A friendly settlement was reached between Sweden and the Applicant who had claimed that he had neither been « brought promptly before a judge or other officer authorised by law to exercise judicial power » nor brought to trial « within a reasonable time » in breach of Art. 5, § 3 (36).

Several recent cases concern the right to a « public hearing ». In the *Case Le Compte, Van Leuven and De Meyere* (1981) and in the *Case Albert and Le Compte* (1983) the Court decided that Belgium had violated Art. 6, § 1, because the disciplinary proceedings against medical doctors are not conducted in public. In the *Case of Pretto and others* (1983) concerning civil proceedings before the Italian « Cour de Cassation », the *Axen Case* (1983) concerning civil proceedings before the German « Bundesgerichtshof » and the *Sutter Case* (1984), concerning military criminal proceedings before the Swiss Military Tribunal of Cassation, the Court decided that there was not violation of the Convention.

In the *Piersack Case* the Court decided in 1982 that Belgium had not respected the requirement of providing for an « impartial tribunal » (Art. 6, § 1) in allowing a magistrate, who had acted as a prosecutor in a case, to sit later as a judge in the same case. In 1984 in the *Case of De Cubber* the Court decided that Belgium had also violated Art. 6, § 1, on the same point. The presence of a former inquiry officer later as a judge in the tribunal in the same case could not be allowed. Also in the *Case of Sramek* against Austria in 1984 the Court decided with a vast majority (13 versus 2) that Art. 6, § 1, was violated because one of the members of the tribunal was a person, subordinated to one of the parties.

Other cases concerned the requirement of a « reasonable time » within which trials should be conducted. The Court found a violation of Art. 6, § 1, in the *Eckle Case* against the Federal Republic of Germany (1982), the *Case of Foti and others* and the *Corigliano Case* against Italy (also 1982), the *Case of Zimmermann and Steiner* against Switzerland (1983), the *Oztürk Case* against the Federal Republic of Germany (1984), and the *Case of Guincho* against Portugal (1984) in a civil procedure in reparation.

Unlike the *Adolf Case* against Austria in 1982, in the presumption of innocence guaranteed in Art. 6, § 2, was considered violated in the *Minelli Case* against Switzerland in 1983.

(36) In connection with the settlement, the Government accepted to pay the Applicant for his legal costs (expenses and loss of time) the sum of about 700 US $. In a joint dissenting opinion Judges Wiarda, Ryssdal and Ganshof van der Meersch considered that striking out the case would appear to satisfy the individual interests of the applicant, who indeed concedes that this is so; on the other hand, such a decision does not seem to be consonant with the general interest attaching to observance of human rights, which interest the Court is responsible for safeguarding.

The Federal Republic of Germany violated Art. 6, § 3, al. *c*, in the *Pakelli Case* (1983) by not providing a lawyer in « Revision »-proceedings before the « Bundesgerichtshof » and Italy violated this article in the *Goddi Case* (1984) because the lawyer choosen by the defendant did not receive any notification of the procedure. In the Case of *Campbell and Fell* also decided in 1984, the United Kingdom violated Art. 6, § 3, al. *b* and *c*, because the defendant could not consult a lawyer to prepare his case, nor could he be defended by a lawyer before the Board of Visitors in jail; the Court decided also to a violation of Art. 6, § 1 (no public given decision), and Art. 8 (personal correspondence). As decided by the Court in 1983 in the *Van der Mussele Case*, Belgium does not violate the Convention in not reimbursing lawyers for the expenses incurred in assisting persons who do not have sufficient means to pay for legal assistance.

The United Kingdom has violated the right of prisoners to respect for their correspondence (Art. 8) with respect to several letters in the *Case of Silver and others* decided in 1983. In the *Case of Malone* also against the United Kingdom (1984) the Court decided that Art. 8 was violated because of the interception and registration of called subscribers. The Court found no violation of Art. 14 combined with Art. 6 and with Art. 8 in the *Case of Rasmussen* against Denmark (1984).

Finally, Sweden has violated the right to property (Art. 1 of the First Protocol), as well as the right to a fair hearing (Art. 6, § 1), in the *Case of Sporrong and Lönroth* decided in 1982. In the *Case of Campbell and Cosans* (1982) the Court has decided that the United Kingdom had violated the right of the parents to education in conformity with their own philosophical convictions (Art. 2 of the First Protocol) by suspending children from school because their parents refused to accept that they would be liable to corporal punishment.

c. *The reparations awarded*

With respect to the reparations awarded by the Court of Strasbourg there is also a remarkable progression in the last yeais. Before 1980 the Court awarded a reparation only in three cases : the *Ringeisen Case* in 1972 and the *Neumeister Case* in 1974 against Austria and the *Case of Engel and others* against the Netherlands in 1976. Since 1980 the Court awarded a reparation in 33 cases and in two other cases already decided the question of reparation is still pending (37).

In total the Court awarded reparations for about 600,000 US $. The most important reparations were awarded in the *Case of Sporrong and Lönnroth*

(37) GRAY, C. D., « Remedies for individuals under the European Convention on Human Rights », *The Human Rights Review*, 1981, pp. 153-173; GOLSONG, H., « Quelques réflexions à propos du pouvoir de la Cour européenne des Droits de l'Homme d'accorder une satisfaction équitable (art. 50 de la Convention européenne des droits de l'Homme) », in *René Cassin Amicorum Discipulorumque Liber*, 1969, pp. 88-94.

against Sweden in 1984 (about 240,000 US $) and in the *Case of Young, James and Webster* (the « closed shop » case) against the United Kingdom in 1982 (about 200,000 US $). Also important (ranging from about 15,000 US $ to more than 40,000 US $) was the reparation awarded in the *König Case* against the Federal Republic of Germany in 1980, the *Case of Campbell and Fell* (1984), the *Sunday Times Case* (1980) and the *Case of Silver and others* (1983) against the United Kingdom. The average reparation in the other 31 cases was about 2,000 US $. The lowest amount of reparation was awarded in the *Case of Engel and others* against the Netherlands in 1976 : about 30 US $.

* * *

This quantitative analysis of the evolution of the European Convention — covering a period of slightly more than 30 years since its entry into force — shows a very striking progression. Over the years, more and more States became members of the Council of Europe and parties to the European Convention. More and more States recognized the jurisdiction of the Court and the competence of the Commission to deal with individual applications. More and more applications were declared admissible and more and more cases were decided by the Court. The Court found more and more violations and awarded more and more reparations.

However, those successive evolutions are not linear but *exponential.* This clearly proves the dynamics of the European Convention and of the Court in particular. The system of the European Convention on Human Rights is a living instrument and the Court is very well alive. With 15 cases decided in 1984, there are no indications that this evolution will slow down. Quite the contrary.