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## **Election of a judge to the European Court of Human Rights**

(in accordance with Article 22 of the European Convention on Human Rights)

List and curricula vitae of candidates submitted by the Government of Belgium

**Contents**

*Page*

<b>List and curricula vitae of candidates submitted by the Government of Belgium .....</b>	<b>3</b>
André ALEN.....	5
Paul LEMMENS.....	9
Pierre VANDERNOOT.....	15

## List and curricula vitae of candidates submitted by the Government of Belgium

*Non-official translation  
Or. French*

### **Covering letter to the Secretary General of the Parliamentary Assembly from the Belgian Permanent Representation, dated 13 July 2011**

Sir,

I have the honour to forward to you the attached letter from the Belgian Ministry of Justice in reply to your letter of 24 May 2011 concerning the list of candidates for election as judge of the European Court of Human Rights in respect of Belgium. Also please find herewith the candidates' CVs and their letters of motivation.

Yours faithfully,

Alain Cools  
Ambassador

*Non-official translation  
Or. French*

**Letter to the Secretary General of the Parliamentary Assembly from the Belgian Federal Department of Justice, dated 7 July 2011**

Subject: Election of the Belgian judge to the European Court of Human Rights

Sir,

Further to your letter of 24 May 2011, I have the honour to forward to you herewith the list of candidates short-listed for the election of a judge in respect of Belgium foreseen in April 2012:

- Mr André ALÉN, Judge of the Constitutional Court,
- Mr Paul LEMMENS, Member of the Conseil d'Etat,
- Mr Pierre VANDERNOOT, Member of the Conseil d'Etat.

Here is a summary of the national procedure followed for the election of the candidates put forward.

In accordance with your Assembly's Recommendation 1646, a call for candidates was issued in the Official Gazette (*Moniteur belge*), in the special-interest press and to the Supreme Courts, the Bar Associations and the universities. A six-member panel consisting of a member of the judicial service, two parliamentarians, a member of the Higher Council for Justice and two members of the office of the Government Agent before the Court, heard the 13 candidates who came forward and, having deliberated, proposed to the Council of Ministers the 5 candidates who had displayed the greatest fitness to hold the office of judge of the Court. The Government hereby presents you with the 3 candidates heading the selection.

Mr Boillat's letter of 3 March 2010 concerning the lapse of the procedure opened before your Assembly annuls the supranational procedure, without prejudice to the validity of its completed national stage. Consequently, we have opted for the retention of the list already submitted.

The above-mentioned candidates had in fact informed us of their availability for the tenure of the office postponed by the entry into force of Protocol No. 14.

However, since the current list does not contain a female candidate, we are aware that is admissible only by way of an exception, having regard to the special circumstance of the case. It should be noted in this connection that the State not only made a public call for candidatures widely published in the Official Gazette and the special-interest press and open for a month, but also required all candidates who responded to undergo an interview without short-listing on the basis of the CV.

Lastly, at the interview, under arrangements available for your consultation, steps were taken to have the qualifications and experience of all candidates of both sexes assessed in such a way that their applications could be considered on equal terms.

It emerged from the interview that the sole female candidate to come forward did indeed meet the requirements of competence stipulated by Article 21, paragraph 1, of the Convention, but like other candidates also meeting the requirement of competence, could be classed as not possessing equivalent competence to the three candidates mentioned above.

The State, having accordingly taken all requisite measures to ensure the presence of the under-represented sex, feels that it can avail itself of the Court's opinion of 12 February 2008 (paragraph 54) specifying that in these specific circumstances a list cannot be rejected on the sole ground that no woman has applied.

Furthermore, the State observes that the Court includes 19 women, ie over 40% of the judges now serving. The fact that no manifest gender imbalance persists in the Court's composition militates in favour of taking into consideration the special circumstances which today, unlike the situation in 2004, result in the presentation of a single-sex list.

Of course, I remain fully at your disposal should you require any further information.

Yours faithfully,

The Minister of Justice  
Stefaan DE CLERCK

**André ALEN**  
**CURRICULUM VITAE\***

**I. Personal details**

Name, forename – ALEN, André

Sex – male

Date and place of birth – 25 September 1950, Assent (Belgium)

Nationality/ies – Belgian

**II. Education and academic and other qualifications**

- Studied law at Katholieke Universiteit Leuven (1968-1973; degree in law, magna cum laude)
- Doctorate in law, Katholieke Universiteit Leuven, 2 June 1983 (doctoral thesis on the historical and ideological sources of the Belgian Constitution; awarded academic prize)

**III. Relevant professional activities**

a. Description of judicial activities

Judge at the Belgian Constitutional Court (2001 to date)

b. Description of non-judicial legal activities

– Pupil barrister at Brussels Court of Appeal (1976-1978)

– Teaching: assistant (1973-1977) and lecturer/professor in constitutional law at Katholieke Universiteit Leuven (1986 to date); lecturer/professor in constitutional law at the University of Gent (1984-1994); special professor at Université Catholique de Louvain (1997-1998); visiting professor at the University of Fribourg (Switzerland, 1998)

– Assessor (professor acting in advisory capacity) in the legislation section of the Council of State (advising on draft legislation and regulations) (1992-2001)

c. Description of non-legal professional activities

None

**IV. Activities and experience in the field of human rights**

a. Judge in the Belgian Constitutional Court (comprising six French-speaking and six Dutch-speaking judges): The Court was established in 1980 to settle disputes regarding the competence of federal and federate-entity lawmakers; its jurisdiction was extended in 1989 and especially in 2003 to cover respect by the respective lawmakers for the human rights enshrined in the Constitution. Most (95%) of the cases dealt with by the Court concern the latter. In addition, the Court considers the human rights enshrined in the Constitution in conjunction with the provisions of conventions binding on Belgium which are similar in scope, in particular the European Convention on Human Rights. The Belgian Constitutional Court therefore interprets constitutional safeguards in the light of the case law of the European Court of Human Rights, the rulings of which are mentioned at some length.

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\* Underlined text indicates posts or missions held at present.

*b.* Professor of constitutional law:

- Human rights form a large part of constitutional law teaching.
- Several of my publications deal with the matter (eg, equality and non-discrimination). This also applies to various colloquies I have organised (eg, protection of minorities and children's rights). Lastly, over half of the 20 doctoral theses for which I have been on the jury have related to human rights (eg, freedom of expression, family life, language freedoms, socioeconomic rights).

*c.* Academic research:

- My current academic research focuses on the relationship between European constitutional courts, the EU Court of Justice and the European Court of Human Rights (see VII, (6) and (7), below);
- My previous areas of research included:
  - \* children's rights (in particular, an interuniversity research project on "Human Rights of Children. Implementation and monitoring through participation", an international colloquy and publications, see VII, (2) and (8), below);
  - \* the protection of minorities (in particular, seminars in South Africa and on the Framework Convention for the Protection of National Minorities; several publications).

*d.* Work concerning foreign conflicts;

- Former Yugoslavia (Cavtat, 21-24 October 1990): chair of a section at the conference on Democratic Governance in Multi-Ethnic States organised by W F Mondale;
- South Africa (1-15 August 1993): several presentations and discussions in connection with the preparation of a new constitution;
- Cyprus (18-21 January 2000): consideration of the issue of the accession of Cyprus to the European Union, with report to UN Under-Secretary-General Alvaro de Soto;
- Congo (Kinshasa, 4-9 February 2007): advising a committee responsible for drawing up legislation implementing the new Constitution with respect to higher courts.

## **V. Public activities**

*a.* Public office

Adviser to the Minister of Justice (1978-1979); deputy head of the private office of the Prime Minister (1979-1981); head of the private office of the Minister for Institutional Reform (1981-1984) and of the Prime Minister (1984-1987); secretary to the Cabinet (1985-1992). Through these positions, I was able to make a real contribution to the 1980, 1988 and 1993 reforms of the Belgian state.

*b.* Elected posts

None

*c.* Posts held in a political party or movement

None

## **VI. Other activities**

- Member the Royal Academy of Belgium, Arts Section (1999 to date);
- Member of the International Association of Constitutional Law (2004-2007: member of the Executive Committee; currently chair of the judges' section);
- Member of the European Summer University organised by the Institute of Federalism of the University of Fribourg, Switzerland (lectures on federalism; presentations at colloquies, eg on 15 March 2004 on Federalism: A Tool for Conflict Management in Multicultural Societies with regard to the Conflicts in the Near East);
- Legal advice (before appointment as judge):
  - to the speakers of the chambers of parliament (eg on the simultaneous conduct of parliamentary inquiries and judicial inquiries);
  - to the Government on a draft new Belgian Constitution (1993-1994);
  - to the European Parliament on a draft Constitution for the European Union (1993);
- Chair and active member of the editorial committee of two legal journals;
- Presentations (around 120) at colloquies in Belgium and other countries (see also IV, d, below); representation of the Belgian Constitutional Court at colloquies (eg, as general rapporteur at the 12th Conference of European Constitutional Courts (see VII, (6), below);
- Author of articles in journals (before appointment as judge).

## VII. Publications and other works

– Total: 47 works as (co-)author; 23 works as (co-)editor; 133 articles.

Main works:

- (1) Editor of *International Encyclopaedia of Laws – Constitutional Law* (Monographs; Texts of Constitutions; Subnational Constitutional Law) (overview of constitutional law, including human rights, by country; 11 volumes from 1992 to date).
- (2) Co-editor of *A Commentary on the United Nations Convention on the Rights of the Child* (article-by-article commentary; 21 parts from 2005 to date).
- (3) *Rechter en bestuur in het Belgische publiekrecht. De grondslagen van de rechterlijke wettigheidscontrole* (doctoral thesis, 1984, 928 p).
- (4) *Handboek van het Belgisch Staatsrecht* (treatise on constitutional law; 1995, 889 p).
- (5) *Précis de droit administratif belge* (co-author; 1989, 697 p).
- (6) *Les relations entre les Cours constitutionnelles et les autres juridictions nationales, y compris l'interférence en cette matière, de l'action des juridictions européennes/The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts* (co-editor and general rapporteur at the 12th Conference of European Constitutional Courts in 2002; 2 volumes, 779 p).
- (7) "Les relations entre la Cour de Justice des Communautés européennes et les Cours constitutionnelles des Etats membres" (in *Liber Amicorum P Martens*, 2007, p 665-713; also published in Italian).
- (8) "The UN Convention on the Rights of the Child's Self-executing Character" (in *Monitoring Children's Rights*, 1996, p. 165-186).
- (9) "Bundestreue' in het Belgisch grondwettelijke recht" (*Jahrbuch des Öffentlichen Rechts*, 1994, p. 439-505).
- (10) "Nationalism – Federalism – Democracy. The example of Belgium" (*Revue européenne de droit public*, 1993, No. 1, p. 41-88).

## VIII. Languages

Language	Reading			Writing			Speaking		
	very good	good	fair	very good	good	fair	very good	good	fair
<b>a. First language:</b>									
– Dutch	X			X			X		
<b>b. Official languages:</b>									
– English	X				X			X	
– French	X			X			X		
<b>c. Other languages:</b>									
– German		X				X			

**IX. In the event that you do not meet the level of language proficiency required for the post of judge in an official language [the second], please confirm your intention to follow intensive language classes of the language concerned prior to, and if need be also at the beginning of, your term of duty if elected a judge on the Court.**

N/A

## X. Other relevant information

- Honorary title of baron, conferred by the King in 1993;
- Active role in the reforms of the Belgian state (see V, a, above);
- Chair of the Library and Documentation Committee at the Belgian Constitutional Court.

**XI. Please confirm that you will take up permanent residence in Strasbourg if elected a judge on the Court.**

I confirm that I will take up permanent residence in Strasbourg if elected a judge at the Court.

Brussels, 12 November 2009  
(Signed) Prof. Dr. André ALEN

## MOTIVATION FOR POSING CANDIDATURE

*(Translation of excerpt from letter to the Belgian Minister for Justice, Mr Stefaan DE CLERCK)*

In support of my candidature, I wish to draw your attention to my wide-ranging career and give you all the details needed to back my application as Belgian candidate for the post of judge on the European Court of Human Rights.

First of all, I would underline my very active commitment to society, which I believe is vital to the post and which is illustrated by my long spell as secretary to the Cabinet. In that post, I witnessed key developments at first hand, while also playing an active part in them. The post gave me a far-reaching insight into society of a kind that is bound to be of benefit to a judge in a supranational court.

Moreover, I have taught constitutional law at two Flemish universities – as a lecturer and professor – for over 25 years. In the process, I have acquired in-depth knowledge of both the protection of fundamental rights and freedoms and relations between state authorities and international legal relations, in particular the triangular relationship between European constitutional courts, the Court of Justice of the European Communities and the European Court of Human Rights. In all these fields, I have published several books, monographs and articles. In addition, I have taken part in research projects, organised seminars and supervised doctoral theses, including many in the human rights field relating in particular to children's rights, minority rights and the principle of equality. This experience has been boosted by contacts with foreign experts, in particular through the International Association of Constitutional Law. I therefore believe I am well versed in the comparative law approach underpinned by and imbued with a spirit of legal, social, cultural and socio-political diversity which characterises the reasoning of the European Court of Human Rights.

Lastly, having been a judge at the Belgian Constitutional Court since March 2001, I have full command of all aspects of judicial functions. Most of the cases dealt with by the court involve ensuring that the various lawmakers in Belgium respect fundamental rights and freedoms. The fact that the Constitutional Court draws on similar provisions of the European Convention on Human Rights and their interpretation by the Strasbourg Court when applying the provisions of the constitution is clearly a further asset for the exercise of the post of Belgian judge at the latter.

In view of this professional experience and some of my key character traits such as discretion, a flair for communication and (international) collaboration, as well as a good amount of assiduity and personal commitment, I believe I fit the profile for the future Belgian judge on the European Court of Human Rights.

Prof. Dr. André Alen

**Paul LEMMENS**  
**CURRICULUM VITAE\***

**I. Personal details**

Name, forename: LEMMENS Paul

Sex: male

Date and place of birth: Wilrijk (Antwerp), 29 June 1954

Nationality: Belgian

**II. Education and academic and other qualifications**

- Candidate in Law, University of Antwerp, 1971-73 (magna cum laude)
- Licentiate in Law, Catholic University of Leuven (K.U.Leuven), 1973-76 (magna cum laude)
- Master of Laws, Northwestern University, Chicago, USA, 1977-78 (no honours awarded)
- Doctor in Law, Catholic University of Leuven (K.U.Leuven), 1987 (no honours awarded)

**III. Relevant professional activities**

*a.* Description of judicial activities

- Auditeur, Council of State (Supreme Administrative Court), 1984-87
- Judge, Council of State (Supreme Administrative Court), since 1994; chamber president since 2005. Advisory section (1994-2005 and since 2009) and contentious section (2005-2009).

*b.* Description of non-judicial legal activities

- Assistant, Catholic University of Leuven, 1976-86 (first constitutional law, then civil procedure)
- Professor, Catholic University of Leuven, since 1986 (human rights since 1986, civil procedure 1986-1995; administrative procedure 1995-1997; constitutional law 1997-2008)
- Member of the Brussels bar, 1976-84 and 1987-94
- Member, Human Rights Advisory Panel (UN, Kosovo), since 2007

*c.* Description of non-legal professional activities

Not applicable

**IV. Activities and experience in the field of human rights**

1. Practical activities and experience

- As practising lawyer: specialised in international and national human rights law. Several cases before the European Commission and the European Court of Human Rights (either on behalf of an applicant or on behalf of the Belgian government).

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\* Underlined text indicates posts or missions held at present.

- As member of the advisory section of the Council of State: examination of compatibility of draft legislative and regulatory administrative acts with higher norms, in particular treaty and constitution provisions on human rights.
- As member of the contentious section of the Council of State: several cases raising issues of international and national human rights law.
- As member of the Human Rights Advisory Panel in Kosovo: examination of complaints filed by victims of alleged violations of human rights by the United Nations Mission in Kosovo (UNMIK).
- *Ad hoc* judge in four cases before the European Court of Human Rights (1999-2003 and 2009).

## 2. Academic activities and experience

- Teaching, research and writing primarily in the field of human rights law, since 1976. Director of the Institute for Human Rights of the Catholic University Leuven, since 1986.
- Member of the Council of Directors of the European Master's Programme in Human Rights and Democratisation (inter-university programme, with the participation of 41 universities), Venice, since 1997. Responsible for teaching on civil and political rights.
- Numerous opinions and reports on human rights issues, at the request of international and national authorities, including participation as an expert in Council of Europe monitoring activities (studies on compatibility of national laws, etc.) and formation activities (in particular in Central and Eastern Europe).

## V. Public activities

### a. Public office

- Member, Commission for the protection of private life (data protection commission), 1987-1997
- Member, Board for the Recruitment of Members of the Judiciary, 1992-1994
- Member, Board of Administrators, Centre for Equal Opportunities and Opposition to Racism, 1993-1994
- Member, National Commission for the Rights of the Child, since 2006

### b. Elected posts

None

### c. Posts held in a political party or movement

None

## VI. Other activities

- President, Flemish Inter-University Centre for Human Rights, 1992-2003
- Member of the Council of Directors, European Master's Programme in Human Rights and Democratisation (Venice), since 1997
- Senior expert for Belgium, Legal experts group of the Fundamental Rights Agency (FRALEX), since 2007

## VII. Publications and other works

Author, co-author or editor of 17 books; author or co-author of about 75 articles and about 85 case law notes.

Selection of ten publications in the field of human rights:

- *Geschillen over burgerlijke rechten en verplichtingen. Over het toepassingsgebied van de artikelen 6, lid 1, van het Europees Verdrag over de rechten van de mens en 14, lid 1, van het Internationaal Verdrag inzake burgerrechten en politieke rechten* (in Dutch; translation: *Disputes on civil rights and obligations. On the scope of application of Articles 6 § 1, of the European Convention on Human Rights and 14 § 1, of the*

- International Covenant on Civil and Political Rights*), *Publikaties Interuniversitair Centrum voor Staatsrecht – Proefschriften en verhandelingen*, XIII, Kluwer, Antwerp, 1989, XX + 316 pages (doctoral thesis).
- “Effects of the ECHR on certain areas of civil law”, *All-European Human Rights Yearbook*, 1992, 213-233; in French: “Les effets de la CEDH dans certains domaines du droit civil”, *Revue universelle des droits de l’homme*, 1992, 447-455.
  - “The Relation between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights – Substantive Aspects”, *Maastricht Journal of European and Comparative Law*, 2001, 49-67.
  - With Wouter VANDENHOLE, “De heropening van de strafprocedure na een veroordelend arrest van het Europees Hof voor de Rechten van de Mens” (in Dutch; translation: “The reopening of criminal proceedings after a judgment of the European Court of Human Rights finding a violation”), *Tijdschrift voor Strafrecht*, 2001, 49-74.
  - “Single-judge Formations, Committees, Chambers and Grand Chamber”, in *Protocol No. 14 and the Reform of the European Court of Human Rights*, (P. LEMMENS and W. VANDENHOLE, eds.), Antwerp, 2005, 31-43.
  - “Het 14de Protocol bij het E.V.R.M.: het Europees Hof tegen zijn ondergang behoed?” (in Dutch; translation: “Protocol No. 14 to the ECHR: the European Court guarded from its downfall?”), in *Uitdagingen door en voor het EVRM*, (P. LEMMENS, ed.), Mechelen, 2005, 103-143.
  - “Death penalty, life sentence and long-term sentences: inhuman punishments?”, in *Strafrecht als roeping. Liber amicorum Lieven Dupont*, Leuven, 2005, 467-486.
  - *Vrijheid van meningsuiting. Een grondrecht ingebed in plichten en verantwoordelijkheden* (in Dutch; translation: *Freedom of expression. A fundamental right embedded in duties and responsibilities*), Vereniging voor de vergelijkende studie van het recht van België en Nederland, Deventer, 2005, IV + 103 pp.
  - “Guidance by supreme courts to lower courts on the requirements of the European Convention on Human Rights”, *The role of Supreme Courts in the domestic implementation of the European Convention on Human Rights. Proceedings of the Regional Conference, Belgrade, 20-21 September 2007*, Council of Europe, 2008, 36-51; in French: “Guider les juridictions inférieures sur les exigences de la Convention européenne des droits de l’homme”, *Le rôle des Cours suprêmes dans la mise en oeuvre de la Convention européenne des droits de l’homme au niveau interne. Actes de la Conférence régionale, Belgrade, 20-21 septembre 2007*, Conseil de l’Europe, 2008, 39-54.
  - “Bescherming tegen discriminatie” (in Dutch; translation: “Protection against discrimination”), *Themiscahier, Staatsrecht*, no. 54 (A. ALEN and P. LEMMENS, eds.), Bruges, 2009, 79-102.

### VIII. Languages

Language	Reading			Writing			Speaking		
	very good	good	fair	very good	good	fair	very good	good	fair
<b>a. First language:</b>									
– Dutch	x			x			x		
<b>b. Official languages:</b>									
– English	x			x			x		
– French	x			x			x		
<b>c. Other languages:</b>									
– German			x						
– Spanish			x						

**IX. In the event that you do not meet the level of language proficiency required for the post of judge in an official language [the second], please confirm your intention to follow intensive language classes of the language concerned prior to, and if need be also at the beginning of, your term of duty if elected a judge on the Court.**

Not applicable.

I am prepared to learn another language than the official ones, if that is useful for the work of the Court.

**X. Other relevant information**

Nominated by the Belgian government as a candidate for the post of judge in the European Court of Human Rights, 2004.

**XI. Please confirm that you will take up permanent residence in Strasbourg if elected a judge on the Court.**

I confirm that I will take up permanent residence in Strasbourg if elected a judge on the Court.

## MOTIVATION FOR POSING CANDIDATURE

1. The European Court of Human Rights occupies a crucial position in Europe. It has to see to it that Europe remains founded on the principles of the rule of law, human rights and democracy. I strongly believe in the unique role of the Court, and I would like to take part in the execution of its task.

Nowadays the Court is going through a crisis. With an already dramatic number of cases waiting for being disposed of and with an ever growing flow of incoming cases, the Court faces the challenge of increasing its effectiveness without losing its credibility and its authority. I had the pleasure of being involved by the Council of Europe in some of the activities for the preparation of Protocol No. 14 to the European Convention on Human Rights. I am aware of the difficulties that the Court has to deal with. For me, this difficult situation is another reason to show my readiness to take up responsibility within the Court.

Work as a judge in the Court is not totally unknown to me. In the past I have been appointed a few times to serve as an ad hoc judge in cases against Belgium. Even if this contribution to the activities of the Court was very modest, my temporary function as a judge in Strasbourg gave me the opportunity to observe from within how the Court works.

2. A position as judge in the European Court of Human Rights would be in the line of my professional activities until now.

As a young “stagiair” at the bar, I was lucky to be involved immediately in an important case before the European Commission of Human Rights. The experience that I acquired in that case allowed me to develop in my law practice a specialisation in the field of fundamental rights. Over the years I could appear several more times before the European Commission, and even up to three times before the European Court (which at the time, when the Court was not yet transformed into the permanent Court that it is now, was a rather high number).

At the same time I followed an academic career at the Catholic University of Leuven, in which human rights were and are the central point of my attention. As an assistant I wrote a doctoral thesis on an aspect of the right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights. As a professor I am since 1986 tasked with the teaching of the international law of human rights. Within the faculty of law I have founded the Institute for Human Rights, and I had the pleasure of accompanying several young researchers on their path to a doctoral thesis.

The need for solid scientific research in the field of human rights was the reason why, together with colleagues of the other Flemish universities, I participated in the setting up in 1992 of an Inter-University Centre for Human Rights. A number of years later I could stand, together with colleagues from the other Member States of the European Union, at the cradle of the European Master’s Programme in Human Rights and Democratisation, with seat in Venice. This inter-university postgraduate programme, which is now organised by 41 universities, has already formed about thousand young and energetic people, who are now active on all continents.

In 1994 I was appointed judge at the “Conseil d’Etat” (Council of State, or supreme administrative court), after having been already for a short time “auditeur” in the Council (from 1984 to 1987). For about eleven years I belonged to the advisory section of the Council. In that capacity I have often had the opportunity, together with the colleagues with whom I sat in a chamber, to check whether draft legislative and administrative acts were compatible with the international and national law of human rights. Looking back at this period, I think that precisely the opinions in which difficult and ethically or politically sensitive human rights issues were discussed, were those by which we were able to make the most useful contributions.

For the next four years, I served as the president of a chamber of the contentious section of the Council. This activity gave me the opportunity to reconnect with the judicial work. I enjoyed this period very much, feeling most satisfaction when our chamber was able to find a balanced solution in a case opposing strong private interests to equally strong general interests. The work in the contentious section confronted me also with the problem of a backlog generated by events that had taken place years before and for which at the time no solution could immediately be found. With personal efforts and some techniques we managed to reduce the backlog in our chamber considerably.

In September 2009, within the framework of a reorganisation of certain chambers, I have been assigned again to the advisory section.

Since two years I am spending three or four days per month in Kosovo, as a member of the Human Rights Advisory Panel. This quasi-judicial body, set up by the Special Representative of the Secretary General of the United Nations at the request of the Parliamentary Assembly of the Council of Europe, examines complaints by victims of alleged violations of human rights attributable to the UN Mission in Kosovo (UNMIK) during the period that it exercised executive authority. It is the first human rights body of its sort. The Panel is intended to be a mechanism that allows for some accountability of the UN, an international organisation generally enjoying immunity, in the specific context of a post-conflict society. We are very conscious of the fact that the Panel can serve as an example for similar bodies in other parts of the world. We are therefore determined to set a strong precedent, even if the conditions in which the Panel has to work are far from easy.

I hope that I have been able to demonstrate that the choice of being professionally engaged in working with the European Convention has not been made recently. That choice has been made already more than 30 years ago, at a time when the Convention was not yet popular among practitioners and academics. My entire professional career has since then remained focused on the Convention. I try to follow the developments in the European Court's case law. I feel very familiar with the substantive and the procedural aspects of the Court's work. After having observed the Court for many years, and commented critically on its case law and its working methods, I am very motivated to take up a personal and direct responsibility for the fulfilment of the Court's tasks.

3. I believe that it is useful for the European Court if its members have a broad knowledge of their own legal system. I have tried not to lock myself up in a limited number of areas of specialisation, but to stay in contact with a variety of branches of the law. My former and current membership of the advisory section of the Council of State gives me that opportunity. I may add that both my teaching and my practical experience as a member of the bar have made me an actor in all of the different sorts of litigation (civil, criminal, administrative and constitutional).

If European judges have to know their national law, they also should be open to the legal systems and the cultures of other societies. I feel privileged for having been or being in contact with more than one culture and more than one legal system. I have a mother who comes from Central Europe, who has given the example of adapting to a new cultural environment, but who also has aroused in me an interest in the common history of Europe, in the circumstances that created the split between the two parts of it, and in the cultural heritage of Central and Eastern Europe. I did my Master studies in the United States, where I was impressed by the pragmatic way of reaching solutions in legal and other matters. After having worked as a Flemish lawyer in a law firm that originally was almost entirely French speaking, I am currently working in a bilingual judicial institution. Finally, my activities in Kosovo are exposing me to the difficult human rights situation in the Balkan area.

4. According to Article 21 of the European Convention on Human Rights, the judges of the European Court shall be of high "moral character".

I fully subscribe to this requirement, and am aware of its implications. In case of election, I will continue to do my best to be an arduous judge, working in a spirit of collegiality and respecting to the highest degree the principles of independence and impartiality.

Paul Lemmens  
30 November 2009

**Pierre VANDERNOOT****CURRICULUM VITAE****I. Personal details**

Surname, forenames: VANDERNOOT, Pierre (Bernard, Maurice)  
 Sex: Male  
 Date and place of birth: 20 August 1953 – Uccle (Belgium)  
 Nationality: Belgian

**II. Education and academic or other qualifications**

- 1959-1965: primary education in Knokke, Ghent and Brussels;
- 1965-1971: secondary education in Brussels (classics in the last three years);
- 1971-1976: law studies (“candidature” and “licence”, corresponding to current bachelor and master’s degrees) at the Free University of Brussels (ULB): law degree in 1976;
- 1975-1977: international law studies (“licence spéciale”, corresponding to the current postgraduate master’s degree, at the ULB; “licence spéciale” in international law awarded in 1977).

**III. Relevant professional activities**

*NB: Only the main activities are listed here.*

*a. Description of judicial activities*

- 1976-1985: Barrister at the Brussels Bar (trainee, collaborator and finally associate of barrister Pierre Lambert):
  - . Professional activities focusing on public law (drafting of applications and memorials before the Belgian Council of State, representing clients before the same body; civil and criminal court proceedings, etc.);
  - . Legal Aid Adviser (responsible for trainee lawyers) at the Consultation and Defence Office of the Brussels Bar in 1984-1985;
  - . 1983-1985: Secretary of the Brussels Bar Foreigners Advisory Committee, chaired by Maître Régine Orfinger.
- 1985-2000: Legal Secretary (Référéndaire) at the Belgian Constitutional Court (at that time called the Court of Arbitration):
  - . Close collaboration with a president or a judge (either Jean Sarot, in his capacity as judge and then president, and Paul Martens, at that time, judge);
  - . Examination of files (applications to set aside and preliminary points of law);
  - . detailed research in all branches of law, especially constitutional law and international human rights law;
  - . writing draft judgments;
  - . discussions with the president and judges to whom I was attached and with other presidents and judges and other Legal Secretaries;
  - . duties of common interest for the Constitutional Court, as required:

- \* representing the Court at the European Commission for Democracy through Law (Venice Commission);

- \* preliminary study (with Mr Rik Ryckeboer, Legal Secretary) on the creation for that Commission of a 4-monthly bulletin devoted to the case-law of European constitutional courts (and that of courts outside Europe, such as the Supreme Courts of the United States and Canada, the Constitutional Court of South Africa, the supreme courts of South America and Asia, etc), the European Court of Human Rights, and the Court of Justice of the European Communities (Bulletin of constitutional case-law), and a computerised database, available on the Internet, based on the content of this Bulletin (CODICES);

- \* active role within the Commission in the life of this Bulletin and the constant updating of the database (in particular, the preparation of the classification system it uses);

- \* fact-finding and advisory visits to Russia, Ukraine, Bosnia and Herzegovina, and Moldova for the Venice Commission and the Council of Europe in connection with constitutional matters, the setting up and organisation of constitutional courts, the link between international human rights law and the domestic constitutional and legal order, etc.;

- . Duties of general interest for the Constitutional Court, carried out in collaboration with the presidents, judges and other Legal Secretaries: drafting of judgment summaries, constructing case-law tables, including a detailed systematic table, reflection on the reforms to be introduced in the powers of the court and the proceedings before it, etc.

- . Representing the Court on delegations or when required at various international conferences, including:

- \* the Conference of European Constitutional Courts, including the drafting of detailed reports on behalf of the Court for these conferences (examples of reports: the 1990 Ankara Conference of Constitutional Courts on "The Constitutional Court, the hierarchy of constitutional norms and fundamental rights"; the Budapest Conference of Constitutional Courts (May 1996) on "The separation of powers", in collaboration with Paul Martens, at that time judge at the Court of Arbitration; the first conference of the Association of Constitutional Courts using the French Language (ACCPUF), in April 1997, on the principle of equality in the case-law of the constitutional courts using the French language"; the colloquy organised by the French Constitutional Council, bringing together the constitutional courts of the European Union on Control of constitutionality and derived law, in collaboration with Michel Melchior, at that time President of the Court of Arbitration);

- \* the Association of Constitutional Courts using the French Language (ACCPUF.) (report of the Constitutional Court to the Association's 2<sup>nd</sup> conference (Libreville, Gabon, September 2000), on "Access to the Constitutional Court: conditions and procedure"; moderation of various training seminars for judges and staff of the constitutional courts members of the ACCPUF on the use of the tools available to these courts, etc.).

– since 2000: member of the Council of State, assigned primarily to the legislation section of the Council of State:

- . examination of preliminary drafts, bills and private member bills, decrees, orders and regulations, from the point of view of their compatibility with higher norms, especially international human rights law, Community law and the Constitution, the drafting quality of the texts, their consistency with the law in force, etc.;

- . active role (writing of draft opinions) in significant cases submitted to the combined chambers and the general assembly of the legislation section of the Council of State, in particular with regard to preliminary draft and draft texts raising difficulties concerning their compatibility with fundamental rights (euthanasia, assisted reproduction, surrogate motherhood, adoption by homosexual couples, new models of family life, etc.);

- . more limited court activities but carried out on a regular basis, in particular (but not exclusively) in the bilingual chamber of the administrative proceedings section of the Council of State: single judge, reporting judge or member of the bench in various cases;
- . representing the Council of State in the Association of Councils of State and Supreme Administrative Courts of the European Union, in particular, drafting the report for the Belgian Council of State at the colloquy held in The Hague on 14 and 15 June 2004 on the quality of Community legislation and its implementation in the national legal system.

*b. Description of non-judicial legal activities*

- 1984-1993: assistant at the Law Faculty of the ULB (Free University of Brussels) (Public law – assisting among others Professor Jacques Velu – and introduction to law);
- since 1992: lecturer (or replacement lecturer) at the ULB (Law Faculty, Faculty of Economic, Social and Political Sciences, Solvay Brussels School of Economics and Management, Arts and Philosophy Faculty, Education and Psychological Studies Faculty, etc.) for the following courses: status of aliens, introduction to law, public law, constitutional proceedings, technique of the preliminary point of law, education law (title: replacement lecturer and then senior lecturer) (currently: at the Solvay Brussels School of Economics and Management: public law; at the Law Faculty: technique of the preliminary point of law);
- 1990-2008: lecturer on the introduction to law course at the Royal Military Academy, formerly the Royal High Institute for Defence;
 

Various lessons given on an ad hoc basis at the Université catholique de Louvain;

Co-founder with Pierre Lambert in 1990 of the *Revue trimestrielle des droits de l'homme* (see the editorial of this review, 1 January 2006, p. 3);
- since 1990: Member of the editorial board of the *Revue trimestrielle des droits de l'homme*;
- 2006-2007: Co-director (with Pierre Lambert) of the *Revue trimestrielle des droits de l'homme*;
- since 2008: Director of the *Revue trimestrielle des droits de l'homme*;
 

Member of the scientific boards of legal journals and administrator or member of scientific societies (the journal *Administration publique*, administrator of the French-language Administration and Public Management Sciences Association (AFSA), Nemesis publishing; Member of the scientific research network “Research on Brussels and other multilingual cities/capitals” (inter-university grouping, co-ordinated by Ms Els Witte, former rector of the Vrije Universiteit Brussel (VUB) in association with the Flemish Community's Fonds voor Wetenschappelijk Onderzoek), which became the “Centre for Information, Documentation and Research on Brussels (BRIO)” attached to the VUB);
- Since 2007: Chair of the editorial board of the collection *Pratique du droit*, Kluwer Publishing, after having been a member of this board;
- Since 2007: Chair of the editorial board of the “Codes baccalauréat-master”, Kluwer Publishing, after having been a member of this board (previously: member of the drafting committee of the Belgian legislation digest (*Législation belge usuelle*), Kluwer Publishing);
- Since 2007: Member of the René Cassin International Institute of Human Rights (Strasbourg);
 

Participation in various colloquies (see the full list in the complete version of the CV, appended), in particular the conclusions of the following two colloquies:

  - . the colloquy of 7 March 2008 held at the French Conseil d'État, “The influence of the European Convention on Human Rights on the organisation and functioning of supreme courts” (colloquy organised by the “Constitutional Law” group of the Comparative Law Society, Paris);

. the colloquy organised by the Brussels Bar and the latter's Institute of Human Rights on 22 and 23 January 2009 on the subject "Law and solidarity" (a colloquy focusing in particular on economic, social and cultural rights).

Various training courses for public servants (e.g. staff of the Brussels-Capital Region, court registrars);

Various publications on presenting the law to the general public:

. Author of *Le citoyen et la loi – Droits, libertés et protection de la vie privée*, 510 pages, Test-Achats, Brussels, 1989 (awarded the ULB Council of Permanent Education prize, CEPULB.); completely revised and corrected version, 2006, 477 pages; Dutch version published in 2006;

. Press and radio-television interviews;

. Lectures given to the general public (CEPULB, the Belgian Jewish Lay Community Centre (on anti-racist and anti-revisionism legislation); co-director of an exhibition at the ULB Science Museum on the structures of the Belgian state (*The future of Belgians; a challenging time for federalism*), 1999, winner of one of the Wernaers 1999 prizes (ULB) and the CEPULB prize, 1999);

Co-director (with Christine Matray, judge at the Belgian Court of Cassation, of the website [www.justice-en-ligne.be](http://www.justice-en-ligne.be), designed to foster dialogue between citizens and the justice system);

2003: Member of the recruitment panel for the competitive examination for Legal Secretaries at the Court of Arbitration;

Various articles: see point VII below.

c. *Description of non-legal professional activities.* None

d. *Posts currently occupied, among those mentioned above:*

Member of the Council of State;

Senior lecturer at the ULB (lecturer in the course on public law and the technique of the preliminary point of law);

Director of the *Revue trimestrielle des droits de l'homme*;

Co-director of [www.justice-en-ligne.be](http://www.justice-en-ligne.be);

Director or member of several scientific societies and legal digests or journals.

#### IV. Activities and experience in the field of human rights

*NB: Only the main activities are given below:*

– **As barrister (1976-1985):** application of the case-law of the European Court of Human Rights in day to-day work (memorials, conclusions, etc.); Secretary of the Brussels Bar Foreigners Advisory Committee; the practice of the principle of fair trial; trainee, collaborator and subsequently associate of Pierre Lambert, an eminent human rights specialist;

– **As Legal Secretary in the Constitutional Court of Belgium (at the time the Court of Arbitration) (1985-2000):**

. detailed research in all matters relating to public freedoms and human rights;

. writing draft judgments, taking into account human rights;

- . deliberations on human rights;
- . active role on the Venice Commission (see above) in particular in the creation of the CODICES database taking special account of comparative case-law in the field of public freedoms and human rights, including that of the European Court of Human Rights; official assignments for the Council of Europe and the Venice Commission in the field of human rights (see above);
- . report to the Ankara Conference of Constitutional Courts on “The Constitutional Court, the hierarchy of constitutional norms and fundamental rights”, 1990;
- . report to the Budapest Conference of Constitutional Courts (May 1996) on “The separation of powers”, in collaboration with Paul Martens, at that time judge at the Court of Arbitration;
- . report to the Association of Constitutional Courts using the French Language (ACCPUF), in April 1997, on the principle of equality in the case-law of the constitutional courts using the French language;
- . report to the colloquy organised by the French Constitutional Council, bringing together the constitutional courts of the European Union on Control of constitutionality and derived law, in collaboration with Michel Melchior, at that time President of the Court of Arbitration;
- . the report by the Constitutional Court to the 2<sup>nd</sup> conference of the Association of Constitutional Courts using the French Language (ACCPUF) (Libreville, Gabon, September 2000) on “Access to the Constitutional Court: conditions and procedure”;

– **As member of the Council of State (since 2000):**

- . examination of preliminary drafts, bills and private member bills, decrees, orders and regulations, from the point of view of their compatibility with higher norms, especially international human rights law, Community law and the Constitution, the drafting quality of the texts, their consistency with the law in force, etc.;
- . active role (writing of draft opinions) in significant cases submitted to the combined chambers and the general assembly of the legislation section of the Council of State, in particular with regard to preliminary draft and draft texts raising difficulties concerning their compatibility with fundamental rights (euthanasia, assisted reproduction, surrogate motherhood, adoption by homosexual couples, new models of family life, etc.);
- . representing the Council of State in the Association of Councils of State and Supreme Administrative Courts of the European Union, in particular, drafting the report for the Belgian Council of State at the colloquy held in The Hague on 14 and 15 June 2004 on the quality of Community legislation and its implementation in the national legal system.

In the context of scientific activities (see also, above, the reference to reports written for the Court of Arbitration and the Council of State):

- . since 1990: Member of the editorial board of the *Revue trimestrielle des droits de l'homme*;
- . 2006-2007: Co-director (with Pierre Lambert) of the *Revue trimestrielle des droits de l'homme*;
- . Since 2008: Director of the *Revue trimestrielle des droits de l'homme*;
- . Since 2007: Member of the René Cassin International Institute of Human Rights (Strasbourg);
- . Various articles on human rights (see point VII, below, and the complete CV appended to the present CV);
- . Participation at colloquies dealing with fundamental rights, in particular the conclusions to two colloquies:

\* the colloquy of 7 March 2008 held at the French Conseil d'État, “The influence of the European Convention on Human Rights on the organisation and functioning of supreme courts” (colloquy organised by the “Constitutional Law” group of the Comparative Law Society, Paris);

\* the colloquy organised by the Brussels Bar and the latter's Institute of Human Rights on 22 and 23 January 2009 on the subject "Law and solidarity" (a colloquy focusing in particular on economic, social and cultural rights);

. activities relating to providing the general public with information in the field of human rights (two editions of the work *Le citoyen et la loi – Droits, libertés et protection de la vie privée*, 1989 and 1996; website [www.justice-en-ligne.be](http://www.justice-en-ligne.be); articles and lectures).

## V. Public activities

- a. Public office: none
- b. Elected posts: none
- c. Posts held in a political party or movement: none
- d. Posts currently held: none

## VI. Other activities

– 1990-2006: active member of the Bureau of the Decroly school (primary and secondary school, established under private law, subsidised by the French Community of Belgium) and its governing board (drafting of statutes, consideration of legal questions, etc.), vice-chair from November 2000 to 2006.

## VII. Publications and other works

NB: The complete list of publications and other works is given in the complete CV appended to this CV. Account should also be taken of attendance at colloquies and the reports drafted for the Belgian Constitutional Court, at the time the Court of Arbitration, and for the Belgian Council of State, referred to above under point IV.

- Articles: 39;
- Conclusions to colloquies focusing on human rights: 2 (Paris and Brussels, see point IV, above);
- Participation at and communications to national and international colloquies: 23;
- Participation at official seminars and international conferences (conferences of courts, etc.): 18;
- Chairmanship of colloquies: 4;
- Reviews of works and reports: 7;
- University syllabuses for courses on public law and introduction to law;
- Work on presenting fundamental rights to the general public: 1 (two editions);
- Training courses, ad hoc lessons;
- Lectures for the general public on fundamental rights;
- Selection of 10 articles or books, especially in the field of human rights, apart from the reports drafted for the Belgian Constitutional Court, at the time the Court of Arbitration, and for the Belgian Council of State, referred to above:

. 11 January 2002: Hearing by the Senate Institutional Reforms Committee on the planned introduction into Title II of the Constitution of a new provision to ensure the protection of the rights and freedoms guaranteed by the European Convention on Human Rights and on the draft amendment of the special law of 6 January 1989 on the Court of Arbitration (see the report by the Institutional Affairs Committee of 17 October 2002, Senate, *Doc. parl.*, 2002-2003, n/ 2-897/6, pp. 52 to 67.

. "La liberté d'expression dans la fonction publique en Belgique", *Rev. trim. dr. h.*, 1993, pp. 429 to 527;

. "L'accès au juge, la prééminence du droit et quelques autres considérations", comments on the *Philis* judgment of the European Court of Human Rights, 27 August 1991, *Rev. trim. dr. h.*, 1992, pp. 489 to 511;

- . “Les aspects linguistiques du droit des minorités”, *Rev. trim. dr. h.*, 1997, pp. 309 to 369;
- . “Fonction publique, libertés et limites: une question de confiance”, *Administration publique*, 2005 (special edition, “La fonction publique en Belgique”), pp. 216 to 228;
- . “La Constitution belge et la diffusion d’idées racistes: mieux vaut prévenir que guérir”, in *Liber amicorum Paul Martens*, Larcier, Brussels, 2007, pp. 521 to 568;
- . “Regards du Conseil d’État sur une disposition orpheline: l’article 34 de la Constitution”, in *En hommage à Francis Delpérée – Itinéraires d’un constitutionnaliste*, Brussels – Paris, 2007, pp. 1599 to 1630;
- . “La protection juridictionnelle de la diversité culturelle et de ses limites”, *Annuaire international des droits de l’homme* (Ant. N. Sakkoulas – Athens, Bruylant – Brussels), 2008, pp. 375 to 409;
- . “Conclusions” (conclusions of the colloquy of 7 March 2008 held at the French Conseil d’État, “The influence of the European Convention on Human Rights on the organisation and functioning of supreme courts” (colloquy organised by the “Constitutional Law” group of the Comparative Law Society, Paris), *Revue internationale de droit comparé*, 2008, n/ 2, pp. 353 to 372;
- . Conclusions of the colloquy organised by the Brussels Bar and the latter’s Institute of Human Rights on 22 and 23 January 2009 on the subject “Law and solidarity”;
- . “Droit du sol, libertés et protection des minorités dans le fédéralisme belge”, in *Mélanges offerts à Robert Andersen*, Brussels, Bruylant, 2009.

### VIII. Languages

- Active knowledge of French (mother tongue);
- Passive knowledge of English;
- Very good knowledge of Dutch (“legal bilingual” level: successful in the Dutch language proficiency examination organised in accordance with Section 73 §2.5 of the co-ordinated laws on the Council of State).

Language	Reading			Writing			Speaking		
	very good	good	fair	very good	good	fair	very good	good	fair
a. <u>First language:</u> French	X			X			X		
b. <u>Official languages:</u>									
– English		X				X			X
– French	X			X			X		
c. <u>Other languages:</u>									
– Dutch	X				X			X	

**IX.** In the event that you do not meet the level of language proficiency required for the post of judge in an official language, please confirm your intention to follow intensive language classes of the language concerned prior to, and if need be also at the beginning of, your term of duty if elected a judge on the Court.

I confirm this to be the case if necessary, and it would give me great pleasure to be able to improve my knowledge of English in this way.

**X. Other relevant information:** none

**XI.** Please confirm that you will take up permanent residence in Strasbourg if elected a judge on the Court

I confirm this to be the case.

## MOTIVATION FOR POSING CANDIDATURE

Further to the notice published in the 2nd issue of the *Moniteur belge* of 30 October 2009, I hereby submit my candidature for the election of the Belgian judge to the European Court of Human Rights.

You will find attached, in pdf and wpd form, my *curriculum vitae* set out according to the model recommended in the notice, as well as the full version of my *curriculum vitae*.

The main reasons why I modestly believe myself qualified to be elected as a judge to the European Court of Human Rights are as follows :

1. When I embarked on the study of law nearly forty years ago, it was no doubt because I had a vocation to use the tools which society provides to citizens to enable them to improve their living conditions, especially where public freedoms are concerned.

During my law studies, between 1971 and 1976, human rights, as positive law, had not yet experienced the spectacular development of case-law which ensued both in the domestic courts and in the European Court of Human Rights and other relevant international institutions, but the teaching of a master such as Professor Jacques Velu, both in public law and on the optional course devoted to the European Convention on Human Rights, very quickly brought home to me the importance of this discipline, from both the social and the legal standpoint.

2. My first steps at the Bar, under my supervisor Maître Pierre Lambert, barrister practising at the Brussels Bar and eminent human rights specialist, confirmed me in these concerns. My work at the Constitutional Court, then known as the Court of Arbitration, particularly my close collaboration with Paul Martens, then a judge, and at the Council of State, further strengthened my interest.

3. In the late 1980s, Pierre Lambert and I had the idea of founding a journal dedicated to human rights: 1 January 1990 saw the publication of the first issue of *Revue trimestrielle des droits de l'homme*, of which I am now director, backed by a prestigious scientific committee and drafting committee.

By virtue of this position, I follow very closely the main trends in case-law and theory in this field, with the European Court of Human Rights playing a key part in this. Systematic in-depth reading of the articles received from the most highly qualified authors in this field and the exchanges to which they give rise with the members of the scientific committee and the drafting committee help to enrich my legal culture on these issues.

4. While my work at the Bar between 1976 and 1985 pointed me mainly towards administrative law, it was chiefly at the Court of Arbitration, now the Constitutional Court, that intense activity developed around the public freedoms enshrined in the Constitution as well as in the relevant international instruments, foremost among which is the European Convention on Human Rights. This period saw the development of the case-law of the Constitutional Court based very extensively on that of the European Court of Human Rights in its interpretation of the standards of domestic law relating to fundamental rights. This obviously required the presidents and judges of the Court of Arbitration and the legal secretaries working with them to pay constant attention to human rights issues. I was privileged to hold the office of legal secretary (*référéndaire*) at the Court of Arbitration from 1985 to 2000.

5. The same unfailing attention is given to human rights at the Council of State, where I have held the office of member of the Council of State in the legislation section since 2000. The preventive supervision of legality exercised by the legislation section of the Council of State focuses primarily on respect for fundamental rights, with an eye both to relevant domestic and international, and especially European, sources. In the "societally" and legally sensitive cases which are brought before the section's general assembly, I have frequently been called upon to play an important part in formulating opinions (on such issues as euthanasia, assisted procreation, surrogate motherhood, adoption by same-sex couples, new models of family life etc).

6. At the same time, my research activities at the university have been geared mainly to human rights, as detailed in the two versions of my CV attached hereto. In such fields as freedom of expression, minority rights, cultural diversity, privacy, the fight against racism and others, several articles published in particular in *Revue trimestrielle des droits de l'homme* or in the *Mélanges* series bear witness to this.

These research activities, also reflected in my teaching activities, particularly the public law course, have also focused on the complex relationship between international law and domestic constitutional law, which I feel is one of the major challenges to the establishment of the most coherent possible overall system, especially in the context of the Council of Europe and the European Union. This approach, based on consideration by domestic courts of supranational practices and responsiveness of European courts to significant trends emerging in the different national systems, should, I feel, be that of all the judicial players involved in these processes.

The national judges at the European Court of Human Rights should play a key role here in their capacity as unbiased intermediaries between the two legal systems.

7. This responsiveness is something I think I have also tried to show in my academic and judicial practices. In a complex country like Belgium, where there has possibly been a tendency to juxtapose two distinct legal cultures, I am anxious to find out what unites these cultures rather than to explore the divisions between them. The article which I wrote recently in *Mélanges offerts à Robert Anderson* on the territoriality principle faced with the necessary pre-eminence of minority rights and freedoms fits in with this perspective of a dialogue transcending the prevailing dogmas on either side. This view of things also dictates my attitude when it comes to writing a draft opinion for the legislation section of the Council of State on sensitive “societal” issues or indeed on problems relating to the division of powers in the Belgian federal system.

I cannot help thinking that, in a court with such a varied composition as the European Court of Human Rights, this kind of approach can contribute to the authority of its case law.

8. My experience of international colloquies, seminars and conferences, particularly in the context of the Council of Europe, the Venice Commission, the Conference of European Constitutional Courts and the Association of Constitutional Courts sharing the Use of the French Language (ACCPUF), devoted for the most part to human rights and constitutionalism, has brought me into contact with other cultures and made me aware of the need for dialogue between them.

9. Judicial functions cannot be improvised

By practising as a barrister, as I did for nearly nine years, I was able to amass an invaluable store of experience about the operation of the courts. The barrister is the key player in the proceedings, who ensures fairness, acts as the voice of the parties and thus confers a democratic dimension on the proceedings. It is also the barrister who suggests changes in the law to the judge.

My dual experience of judicial functions, first as a legal secretary at the Court of Arbitration, then as a member of the Council of State, has accustomed me, since 1985, to the realities of the deliberation process and the issues involved in judicial decision-making. The judge I am has become aware of his role as a law-maker, which he must perform cautiously, while remaining in tune with the deep-seated changes in society. He must also remain aware of the implications of his decisions for the legal system as a whole. But he cannot forget that the principal addressee of his work is the citizen.

This experience can only be useful to the exercise of judicial functions at the European Court of Human Rights, notwithstanding their specific nature.

10. Everyone is aware of the challenges facing the European Court of Human Rights, foremost among which is its backlog of pending cases.

Although instruments have been drawn up to try and resolve these issues to the greatest extent possible, such as Protocol No 14 and, pending its ratification (which may never come about), Protocol No 14*bis* to the European Convention on Human Rights, or internal management measures and – better still – innovative judicial practices (such as “pilot judgments”), a personal commitment will be needed on the part of all the judges to help reduce this worrying backlog. Here again, my experience of judicial functions at the Court of Arbitration and, even more so, at the Council of State augurs well for such a commitment within the European Court of Human Rights.

But there are other challenges.

The first is the tendency, where certain aspects of the Court’s case law are concerned, for judgments to be set in national contexts, so that European citizens are not always able to see how they might be applied generally to other situations and other contexts. The educational effort reflected in some judgments of the Court should be stepped up.

Another challenge is that stemming from what might be termed the fragmentation of certain guarantees, one example of this being the sometimes obscure distinctions drawn by the case-law relating to a fair trial, where it is difficult to differentiate between the “hard core” of the right in question and its so-called secondary elements.

This may create a problem of unforeseeability of human rights standards.

At a time when judges – both national and European – are called upon to play an increasing role in law-making, it is important to try to contribute to greater certainty in the development of case-law.

11. It is in particular this approach, inspired by my experience as a lawyer, judge and university researcher and teacher, not to mention the experience gained from many international gatherings and as director of *Revue trimestrielle des droits de l'homme*, that I would adopt if I were deemed worthy to be elected as a judge to the European Court of Human Rights.

Pierre Vandernoot  
Member of the Council of State  
Director of *Revue trimestrielle des droits de l'homme*  
Lecturer at the Université libre de Bruxelles