

Robert Lecourt (1908 - 2004)

Judge (1962 - 1967) and President (1967 - 1976) of the European Court of Justice

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Robert Lecourt, son of Leon Lecourt and Angèle Lepron, was born on September 19th 1908 in Pavilly, France. After he graduated from the private school Saint-Jean-Baptiste-de-la-Salle in Rouen, he attended the law school of Caen, at which he became a few years later a doctor of law. In 1928, he started working as lawyer in Rouen. Shortly afterwards, he married Marguerite Chabrerie, with whom he had one daughter. In 1932, the young family decided to move to Paris. Here, Lecourt met Jean Raymond-Laurent, the co-founder of the Popular Democratic Party (*Parti Démocrate Populaire*, PDP). Two years later, Raymond-Laurent offered Lecourt to supervise the creation of a Youth Federation of the PDP, which needed a steering committee to coordinate the party's various youth sections. Lecourt accepted the position and became secretary general of the new structure.² In 1936, he took over the presidency of the PDP's Youth Federation and worked in close collaboration with many fellow young French politicians who would later take on important political responsibilities, such as Robert Bichet and Pierre-Henri Teitgen.³ The same year, he also joined the central steering committee of the PDP.

In September 1939, when Hitler's troops invaded Poland and France declared war on Germany, Robert Lecourt was drafted into the French aeronautical services.⁴ After the signature of the armistice between France and Germany, he decided similarly to many other members of the PDP to join the French resistance forces. In order to discuss the attitude that should be adopted towards the German occupant, Lecourt organized clandestine meetings with some of his companions of the PDP's Youth

¹ This paper holds information which is translated from my French book *Juges et avocats généraux de la Cour de Justice de l'Union européenne (1952 - 1972). Une approche biographique de l'histoire d'une révolution juridique*, Frankfurt, Vittorio Klostermann, 2018. It was supposed to be presented at the conference 'Key Biographies in the Legal History of the European Union, 1950-1993', held in June 2018 at the Max Planck Institut für Europäische Rechtsgeschichte, Frankfurt-am-Main. However, I ultimately decided to present a different paper, on the trajectory of the first President of the European Court of Justice, Massimo Pilotti.

² DELBREIL Jean-Claude, *Centrisme et Démocratie chrétienne en France. Le Parti démocrate populaire des origines au MRP, 1919-1944*, Paris, Publications de la Sorbonne, 1990, p. 59.

³ *Ibid.*, p. 354.

⁴ Archives nationales de France (hereafter ANF), Archives MRP, 350 AP, 73, Biographie de Robert Lecourt.

section.⁵ In the fall of 1942, his friend and lawyer André Bossin invited him to enroll in the clandestine movement '*Résistance*'. He quickly became a steering member of the group and was actively involved in the distribution of its leaflets, as well as the *Cahiers du Témoignage chrétien*, which also other PDP members co-edited.⁶ Moreover, he participated in the organization of rescues of paratrooper allies, the centralization and transmission of military intelligence, the distribution of food, ration tickets and false identity documents.⁷ Gradually, the German authorities arrested all the leaders of *Résistance*. From June to August 1944, Lecourt was the only member of the group left to write and distribute the movement's leaflets. Although the Gestapo had issued an arrest warrant against him, he managed to avoid captivity.

On top of his activity for *Résistance*, Lecourt attended other clandestine meetings, which led in autumn of 1944 to the creation of the *Mouvement Républicain Populaire* (MRP), a political party which would play a key role in French politics in the two following decades. The party included many members of the Youth section of the PDP and intended to break with the political practices of the Third French Republic.⁸

In November 1944, a few months after the liberation of Paris, the provisional government chaired by General de Gaulle convened a consultative Assembly to discuss France's most urgent domestic and foreign policy problems. The steering committees of all the major resistance groups which had operated on French territory during the war, were invited to nominate delegates to compose the Assembly.⁹ Lecourt was chosen to represent the movement *Résistance* and was appointed member of the commission which investigated the situation of prisoners of war. He also worked on the sensitive question of the purging process, which was going to be carried out.¹⁰ In addition, he became the author of several law resolutions regarding the government's role in allowing for the compensation of war damages and the voting rights of prisoners and freed deportees.

In October 1945, France held its first post-war legislative elections. With its Gaullist and anti-communist programme, the MRP was unexpectedly successful and secured 24 per cent of the votes.¹¹ Robert Lecourt, who led the MRP list in the 2nd sector of the French district 'Seine', was elected deputy. The vast majority of French people expressed themselves during this same poll in favor of the drafting of a new

⁵ ANF, 350 AP, 155, Proposition pour la croix de la Libération, Robert Lecourt (rapport sur les activités de celui-ci pendant la guerre).

⁶ *Ibid.*, BRUNEAU Françoise, *Essai historique du mouvement né autour du journal clandestin «Résistance»*, Paris, SEDES, 1951, p. 18 and 26.

⁷ ANF, Archives MRP, 350 AP, 73, Biographie de Robert Lecourt.

⁸ LETAMENDIA Pierre, *Le mouvement républicain populaire. Histoire d'un grand parti français*, Paris, Beauchesne, 1995, p. 49.

⁹ CHOISNEL Emmanuel, *L'Assemblée consultative provisoire, 1943-1945. Le sursaut républicain*, Paris, L'Harmattan, 2007, pp. 15 - 16.

¹⁰ « Robert Lecourt », in *Dictionnaire des parlementaires français, 1940-1958*, tome 5, L-O, Paris, La documentation française, 2005.

¹¹ LETAMENDIA Pierre, *Le mouvement républicain populaire, op. cit.*, p. 67.

constitution. A constituent assembly, at which Lecourt was appointed member of the Justice Commission, was granted seven months to set up a draft.¹² The new constitution was adopted on October 27th 1946 and gave birth to the IVth French Republic. Shortly afterwards, Lecourt was elected member of Parliament. Here, he worked in the commission of administrative reform, as well as the commission of finances, and drafted many bills which aimed at reforming the French justice system and administration.¹³

In January 1947, the French elected Vincent Auriol as President. During the first eighteen months of his presidency, the executive was highly unstable. One after the other, governments were forced to resign. In July 1948, the radical-socialist André Marie was invited to form a new government. He attributed the Ministry of Justice to Robert Lecourt. However, as soon as the following month, André Marie resigned and Lecourt had to move back into his position as member of Parliament, at which he now chaired the MRP group. He was called back to the Justice Ministry in February 1949, when the socialist-radical Henri Queuille was appointed head of government. This time his term as Justice Minister lasted eight months.

In parallel to his mandate in the French national Assembly, Robert Lecourt was active in the *Nouvelles équipes internationales* (NEI), an international association founded in 1947 to allow for regular contacts between Christian Democratic political parties in Europe and to promote the circulation of information on their respective political programs.¹⁴ National representatives of the association discussed their different politics at an annual international congress. Lecourt participated in many of these meetings. In 1953, he was part of the French delegation to the NEI Congress in Tours, where ‘supranational authority and the notion of sovereignty’ were discussed. In 1954, he chaired the French delegation at the 8th NEI Congress in Bruges, which dealt with the economic and social policy of Europe. In 1955, he took part in the 9th Salzburg Congress on the political and economic integration of Europe and in 1957, he attended the 11th Arezzo Congress in Italy on the ‘firmness of Christian democracy towards communism in crisis’.¹⁵

¹² Since the elected officials did not succeed in accomplishing their task in the expected timeframe, new elections were held in June 1946. This time the MRP came first on the national level. In the 2nd sector of the Seine, Robert Lecourt’s party however only came in second. Nonetheless, he managed to keep his seat in the Constituent Assembly, in which he was a member of the Justice Commission.

¹³ «Robert Lecourt», in *Dictionnaire des parlementaires français, op. cit.*

¹⁴ Centre d’Etude d’Histoire de l’Europe Contemporaine (CEHEC), Papers Paul Van Zeeland, Dossier 230, Nouvelles équipes internationales (1948), Brochure NEI ; see more generally on the Nouvelles équipes internationales, GEHLER Michael, KAISER Wolfram, ‘Transnationalism and early European integration: the Nouvelles Equipes Internationales and the Geneva circle 1947-1957’, *The historical journal*, vol. 44, n° 3, septembre 2001, pp. 773 - 798 ; PAPINI Roberto, *L’Internationale démocrate-chrétienne : la coopération internationale entre les partis démocrates-chrétiens de 1925 à 1986*, Paris, Cerf, 1988.

¹⁵ See on Lecourt’s participation in these meetings Centre de Documentation et de Recherche: Religion - Culture - Société (KADOC), Archief August de Schryver, 7.2.4.7, 7^e Congrès NEI

As many of his fellow members of the NEI, Robert Lecourt was resolutely in favor of the European integration process. In October 1955, he joined the *Comité d'action pour les Etats-Unis d'Europe*, set up by Jean Monnet to advocate for the application of the Messina resolution, which aimed at the progressive creation of a common market, the integration of national economies and the harmonization of social policies.¹⁶ In April 1958, the leader of the French section of the NEI, Robert Bichet, resigned from his position. Lecourt became his successor.¹⁷ He subsequently presided the French delegation at the annual congresses held in The Hague (1958), Freiburg-im-Brigau (1959), Paris (1960) and Vienna (1962).¹⁸

In November 1957, seven years after he had first been appointed as a French Minister, Lecourt was again called upon to become Justice Minister. He remained in this position until May 1958, when the political crisis created by the Algerian independence war reached its peak and the French government had to step down in order to let Charles de Gaulle form a new executive. After the drafting of a new constitution, which led to the creation of the Vth French Republic, elections were held in November 1958. Robert Lecourt was reelected Member of Parliament.¹⁹ The following month, Charles de Gaulle became President of France. He decided to entrust Michel Debré, a member of the *Union pour la nouvelle République* (UNR), with the formation of a government. Debré appointed Lecourt as Minister of state, responsible for France's relations with African states.²⁰ However, in August 1961, their bad relations forced Lecourt out of the government. This represented the end of his career as a politician.

After he dropped out of the government, Lecourt was offered to become the French ambassador in Switzerland, but he preferred to be appointed head of a national

(Tours, 4-6 sept. 1953) ; 7.2.4.8, 8^e Congrès NEI (Bruges, 10-12 sept. 1954) ; 7.2.4.9, 9^e Congrès (Salzbourg, 16-18 sept. 1955) ; 7.2.4.11, 11^e Congrès NEI (Arezzo, 24-26 avr. 1957).

¹⁶ Groupement d'études et de recherches notre Europe, '20 ans d'action du comité Jean Monnet (1955-1975)', *Problématiques européennes*, n° 8, 2001. See also MIOCHE Philippe, 'Le Comité d'action pour les Etats-Unis d'Europe, Jean Monnet et 'l'Europe sociale'. Visions et révisions', in Fondation Jean Monnet pour l'Europe, *Une dynamique européenne. Le comité d'action pour les Etats-Unis d'Europe*, Paris, Economica, 2011, pp. 131 - 157.

¹⁷ KADOC, Archief August de Schryver, 7.2.5.9, Robert Bichet, président fondateur des NEI à A. Coste-Floret, secrétaire général international des NEI, 18 juin 1958.

¹⁸ See KADOC, Archief August de Schryver, 7.2.4.12, 12^e Congrès NEI (La Haye 8-10 mai 1958; 7.2.4.13, 13^e Congrès NEI (Fribourg-en-Brigau, 28-30 mai 1959); 7.2.4.14, 14^e Congrès NEI (Paris, 22-24 sept. 1960); 7.2.4.16, 16^e Congrès NEI (Vienne, 21-23 juin 1962).

¹⁹ This time, Lecourt did not present himself on the MRP list of the sector 'Seine', but on the one of the 'Hautes-Alpes'.

²⁰ Three months later, he was put in charge of cooperation with the African and Malagasy states. The following year, in February, he became Minister of State for the Sahara, as well as overseas Departments and Territories.

insurance company. Since this was legally impossible,²¹ the French government came up with other solutions for the former Minister: he could either take on the triple presidency of the *Comptoir de vente des charbons sarrois, du Conseil supérieur des alcools et des Mines de Bor* or become a judge at the European Court of Justice, from which the French Jacques Rueff was about to resign.²² Lecourt opted for the latter solution. On May 15th 1962, he became a member of the European bench of judges.²³

In the fourteen years which he spent in Luxembourg as a European judge, Lecourt had a major impact on the jurisprudence of the Court of Justice of the European Communities. As soon as 1963, he played a decisive role in the famous *Van Gend en Loos* case, which led the European judges to lay down the principle of direct effect of European law.²⁴ The case was a question for a preliminary ruling introduced by a Dutch administrative tribunal, which asked whether article 12 of the Treaty of Rome²⁵ was directly applicable in the national legal orders. While the reporting judge in the case, Charles-Léon Hammes, argued that the Court should deny the possibility of direct effect, Lecourt and his Italian colleague Alberto Trabucchi, who defended the opposite point of view, managed to convince the Belgian Louis Delvaux and the Italian Rino Rossi to vote in favor of the direct applicability of article 12.²⁶ Most notably, however, Lecourt was rapporteur in the famous *Costa vs ENEL* case, in which the Court of Justice declared for the first time that European law ought to have primacy over national law.²⁷ He was intimately convinced that taking this step was a necessity for the Court of Justice.²⁸ In 1965, he stated that the future of Europe had depended on the Court's decision on the question of the authority of European law with regard to national laws. By refusing to grant European law supremacy, the judges would have given domestic

²¹ The French legislation did not allow for the nomination of a former member of government within five years after the carrying out of political functions, Centre d'histoire de SciencesPo, Michel Debré Papers, 2 DE 11, Draft Letter from Michel Debré to Henri Dorey, December 1961.

²² Centre d'histoire de SciencesPo, Michel Debré archives, 2 DE 11, Letter from Michel Debré to Robert Lecourt, March 1st 1962.

²³ Historical Archives of the European Union, CM2/1964, 1524, Maurice Couve de Murville to Robert Lecourt, 16 mai 1962.

²⁴ Judgment of the Court of 5 February 1963, NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, Reference for a preliminary ruling; Tariefcommissie - Netherlands, case 26-62, EU:C:1963:1.

²⁵ Article 12 CEE forbade the introduction of new customs duties on imports or exports.

²⁶ RASMUSSEN Morten, 'Revolutionizing European Law: A history of the Van Gend en Loos judgment', *International Journal of Constitutional Law*, vol.12, n°1, 2014, pp. 136-163; VAUCHEZ Antoine, 'The transnational politics of judicialization. Van Gend en Loos and the making of EU polity', *European Law Journal*, vol.16, n°1, 2010, pp. 1-28.

²⁷ Judgment of the Court of 15 July 1964, Flaminio Costa v E.N.E.L., Reference for a preliminary ruling; Giudice conciliatore di Milano - Italy, Case 6-64, EU:C:1964:66.

²⁸ William Phelan has traced back Lecourt's influence on the first revolutionary judgments of the Court not only to his pro-European convictions, but also the legal philosophy which he had developed before his appointment to the Court in his scholarship on French property law. See PHELAN William, 'The Revolutionary doctrines of European law and the legal philosophy of Robert Lecourt', *European Journal of International Law*, vol. 28, n° 3, 2017, pp. 935-957.

courts the possibility to give preference to national law, which meant that national regulations could have emptied the treaties of their substance.²⁹

In spring 1967, when it became clear that the President of the Court Charles-Léon Hammes was going to retire after his mandate expired, Lecourt expressed his ambition to become his successor. In October of the same year, his fellow judges elected him as president. Lecourt was at this stage intimately convinced that the European judges had an active role to play in the creation of an ‘ever closer union among the peoples of Europe’. In order for them to take on this responsibility, it was clear that they had to convince national courts to collaborate. Soon after his election, Lecourt consequently developed a vast communication strategy, which aimed at convincing national judges of the benefits of the preliminary ruling mechanism, a procedure through which they could ask the European judges questions regarding the interpretation of the European Treaties. In 1968, he managed to obtain funding from the Council of Ministers to hold regular receptions of national magistrates at the European Court.³⁰ The same year, more than a hundred judges from thirty-five different domestic jurisdictions, including the highest national courts, gathered in Luxembourg. Nineteen national magistrates even spent an entire week at the Court of Justice.³¹ As judge Alberto Trabucchi stated during one of the visits, the goal of the gatherings was for national and European judges to better understand each other and thus overcome differences that make it less easy to walk the path of unity, which community life tends to lead to.³² According to Lecourt, almost 2.500 magistrates participated under his presidency in such meetings.³³ The same activities were soon also proposed to lawyers, as well as editors of law journals.

The European judges also traveled themselves to national courts. On February 9th 1970, Lecourt visited the Paris *Palais de Justice* and held a speech on European law, its direct effect and supremacy.³⁴ For the Court of the European Communities, these encounters were of utmost importance. Any national magistrate could be confronted with a question of interpretation of the European Treaties. The better they knew the Court which was responsible for the interpretation of these Treaties, the more likely they were to transfer questions for interpretation to the European judges. President Lecourt also created at the Court of Justice a documentation service which was meant to

²⁹ LECOURT Robert, ‘La dynamique judiciaire dans l’édification de l’Europe’, *France-Forum*, n°64, mai 1965, p. 22.

³⁰ LECOURT Robert, *L’Europe des juges*, Bruxelles, Bruylant, 1976, pp. 274-275. These types of visits were already carried out before Lecourt’s presidency. They had been introduced by President André Donner.

³¹ ANF, 19950411, 206, Aperçu des travaux de la Cour de Justice des Communautés européennes en 1968.

³² ANF, 19950411, 206, Visite de la Cour de Justice des Communautés européennes de magistrats des 6 pays de la Communauté, 1er et 2 juin 1967, Allocution de Monsieur le Président de Chambre Trabucchi.

³³ LECOURT Robert, *L’Europe des juges*, *op. cit.*, p. 275.

³⁴ AN/F, 19950411, 206, Remerciements invitation de la Cour à la Magistrature française.

promote the European court's rulings and collect all judgments pronounced by national courts regarding European law. Moreover, he encouraged his fellow judges and the advocates general of the European Court of Justice to promote their institution and the development of community law via publications and conference participations.³⁵ Lecourt participated himself actively in this communication effort.³⁶ During his presidency, he published two monographs, *Le juge devant le marché commun* and *L'Europe des juges*.³⁷ In the first one, he dedicated a large section to the Court's cooperation with national judges via the preliminary ruling mechanism, which he described as fundamental to prevent diverging interpretations in national jurisprudence, which threatened to discompose the uniform essence of community law.

In *L'Europe des juges*, Robert Lecourt deplored the fact that the media, academia and the general public did not pay enough attention to the legal integration of Europe, albeit the fact that the "Europe of Judges" had already been established, and that the future integration had to build on it. Lecourt also used the book to implicitly reject accusations of activism which were directed at the European Court of Justice, and defended his teleological reading of the treaties: in his view, the judges cannot add anything to the treaties, but they must give its clauses their full meaning.³⁸ The treaties make the Court appear at the top of the judicial pyramid, which is meant to preserve the common rule.³⁹

In 1976, when he was sixty-eight years old and his third mandate as President of the European Court of Justice expired, Lecourt retired. However, through numerous articles and book chapters published after his departure from the Court, he demonstrated a continued interest in European law.⁴⁰ In February 1980, he was

³⁵ PESCATORE Pierre, «Robert Lecourt (1908-2004)», *op. cit.*, p. 592.

³⁶ LECOURT Robert, *Le juge devant le marché commun*, Genève, Institut universitaire de hautes études internationales, 1970 ; *id.*, *L'Europe des juges*, Bruxelles, Bruylant, 1976. Since 1963, he had published a dozen articles, among which *id.*, 'Le rôle de la Cour de Justice dans le développement de l'Europe', *Revue du marché commun*, n° 60, 1963, pp. 273 - 275 ; *id.*, 'Le rôle du droit dans l'unification européenne', *Bulletin de l'Association des juristes européens*, n° 17 - 18, 1964, pp. 5 - 22 ; *id.*, 'La dynamique judiciaire dans l'édification de l'Europe', *France Forum*, n° 64, 1965, pp. 20 - 22 ; *id.*, 'La protection juridictionnelle des personnes en droit communautaire', *Recueil Dalloz Sirey*, vol. 10, chronique n° VIII, 1967, pp. 51 - 56 ; *id.*, 'Le rôle de la Cour de Justice dans le développement des Communautés', *Annuaire européen*, vol. XXIV, 1976, pp. 19 - 41.

³⁷ See previous footnote.

³⁸ LECOURT Robert, *L'Europe des juges*, p. 237.

³⁹ *Ibid.*, p. 225.

⁴⁰ Among others : LECOURT Robert, *Les problèmes institutionnels de la Communauté*, Bruxelles, Fonds européen de coopération, 1978 ; *id.*, 'La Cour de Justice des Communautés européennes vue de l'intérieur', in GREWE Wilhelm Georg (dir.), *Europäische Gerichtsbarkeit und nationale Verfassungsgerichtsbarkeit. Festschrift zum 70. Geburtstag von Hans Kutscher*, Baden-Baden, Nomos, 1981, pp. 261 - 272 ; *id.*, 'Le rôle unificateur du juge dans la Communauté', in *Etudes de droit des Communautés européennes. Mélanges offerts à Pierre-Henri Teitgen*, Paris, A. Pedone, 1984, pp. 223 - 237 ; *id.*, 'Cour européenne des droits de l'homme et Cour de justice des Communautés européennes', in *Protection des droits de l'homme : la Dimension européenne*.

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appointed member of the French *Conseil constitutionnel*, at which he continued to be active for the next nine years. Lecourt passed away on August 9th 2004, at the age of 95.

Mélanges en honneur de Gérard.J. Wiarda, Cologne, Carl Heymanns Verlag, 1988, pp. 335 - 340 ;
id., 'Quel eut été le droit des Communautés sans les arrêts de 1963 et 1964 ?', in *L'Europe et le droit. Mélanges en hommage à Jean Boulouis*, Paris, Dalloz, 1991, pp. 349 - 361.