



PARLIAMENTS AND THE EUROPEAN COURT OF HUMAN RIGHTS

Alice Donald and Philip Leach

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and

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Alice Donald

I dedicate my work on this book to the memory of my dearly loved partner of almost twenty years, Nigel Rogers (18 December 1957–18 January 2013). He contributed immensely to my academic endeavours, and his ideals have been an inspiration throughout.

For their friendship and encouragement, warmest thanks are owed to my colleagues Joshua Castellino and Elvira Dominguez-Redondo—and to Philip Leach, a colleague of quiet brilliance and integrity and the most inspiring and supportive of co-authors.

Lastly, I would like to express my heartfelt thanks to my parents, Trevor and Diana Donald; my brother, Paul Donald; my sister-in-law, Fiona Roberts; and my children, Nathan and Ruby Rogers.

Philip Leach

In loving memory of my father, Frank Leach
(1 May 1935–1 January 2016).

I would like to dedicate this book to my mother, Marion Leach. I should also put it on record that it has been an utter joy and privilege to co-author a book with the remarkable Alice Donald.

Sincere thanks also to my inspirational colleagues at EHRAC and at Middlesex University.

Foreword

In recent years, our understanding of the roles which national parliaments can play in the practical implementation of human rights norms and decisions has developed significantly, energized by considerable political and academic interest and scrutiny. When the forty-seven Council of Europe member states met in Brussels in March 2015, for a high-level conference on the 'Implementation of the European Convention on Human Rights, our Shared Responsibility', the governments explicitly acknowledged the value of parliamentary involvement, alongside the executive and the judiciary. The Brussels Declaration urged governments to take steps to improve the awareness of the work of the European Court of Human Rights amongst members of parliament and to involve parliaments in a more transparent 'implementation dialogue', which of course should not be the preserve of governments alone.

During my time as President of the Parliamentary Assembly of the Council of Europe, I have been emboldened in my view that the Assembly can and does play an important role in strengthening the democratic legitimacy of the Council of Europe's human rights mechanisms, including the Court. The Assembly was the continent's first supranational parliamentary body, and, in the words of the signatories to the 1949 Statute, it provides a 'means through which the aspirations of the European peoples may be formulated and expressed, the governments thus being kept continually in touch with European public opinion'.

One of the important areas of focus for the Assembly continues to be the implementation of judgments of the European Court—and the Brussels Declaration was highly supportive of our work in this field. In September 2015, the Assembly published a further Recommendation on the implementation of judgments, based on a report by my colleague Klaas de Vries, who described the scale of outstanding problems as alarming. The Assembly deplored the lack of political will of particular states to implement judgments of the European Court fully and rapidly, and urged the Committee of Ministers to take firmer measures with states that do not comply, including using the 'infringement proceedings' mechanism.

I therefore warmly welcome this important study by Dr Alice Donald and Professor Philip Leach which tackles and elucidates these themes. They cast their spotlight on five European states (Ukraine, Romania, the UK, the Netherlands, and Germany), providing an important depth of analysis. Crucially, however, they also situate their country studies within the broader political, legal, and academic contexts and discussions, thus analysing the institutional and political pressures on the Convention system ('backlog' and 'backlash') and the perceptions, of some commentators, of a crisis of democratic legitimacy within the European human rights system. It is also significant that they address recent debates about the extent to which the European Court is inclined to take account of the extent of any prior

review by national parliaments, in assessing the proportionality of restrictions on European Convention rights—thus, can deference be ‘earned’ and does this represent a deepening of the concept of subsidiarity?

For all of these reasons, I highly commend this book to my European parliamentary colleagues in particular, and to anyone (practitioners, scholars, students) with an interest in the European regional human rights system.

Anne Brasseur
President, Parliamentary Assembly of
the Council of Europe (2014–16)

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When work on the book began, both authors were based at London Metropolitan University. We are especially grateful to Aruna Dudhia for her excellent administrative support in the early stages of the research. In 2013, we moved to Middlesex University, and we are pleased to have the opportunity to express our thanks to colleagues in the School of Law—and especially the Dean of the School, Joshua Castellino—for the stimulating, supportive, and collegiate environment that welcomed us.

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Warm thanks are also due to Merel Alstein and Emma Endean at Oxford University Press for their patient support and care at seeing the book through to publication.

List of Abbreviations

AIV	Advisory Council on International Affairs (<i>Adviesraad Internationale Vraagstukken</i>) (Netherlands)
BVerfGE	<i>Bundesverfassungsgericht</i> (Federal Constitutional Court) (Germany)
CDDH	Steering Committee for Human Rights (<i>Comité Directeur pour les Droits de l'Homme</i>)
ECHR	European Convention on Human Rights
ECommHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
EHRC	Equality and Human Rights Commission (UK)
EU	European Union
FCO	Foreign and Commonwealth Office (UK)
FDP	Free Democratic Party (<i>Freie Demokratische Partei</i>) (Germany)
GC	Grand Chamber
HRTF	Human Rights Trust Fund
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
JCHR	Joint Committee on Human Rights (UK)
NGO	Non-governmental organization
NHRI	National human rights institution
NIHR	Netherlands Institute for Human Rights
NIM	National Institute of Magistracy (Romania)
NJCM	Netherlands section of the International Commission of Jurists (<i>Nederlands Juristen Comité voor de Mensenrechten</i>)
OSJI	Open Society Justice Initiative
PACE	Parliamentary Assembly of the Council of Europe
PPSD	Parliamentary Project Support Division of the Parliamentary Assembly of the Council of Europe
PVV	Party for Freedom (<i>Partij voor de Vrijheid</i>) (Netherlands)
RIS	Romanian Intelligence Service
SPD	Social Democratic Party (<i>Sozialdemokratische Partei Deutschlands</i>) (Germany)
SVP	Swiss People's Party (<i>Schweizerische Volkspartei</i>)
VVD	People's Party for Freedom and Democracy (<i>Volkspartij voor Vrijheid en Democratie</i>) (Netherlands)

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