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PHILIP LEACH

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With a foreword by Sir Nicolas Bratza

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Foreword

The first edition of this book was published shortly after two landmark events in the protection of fundamental rights and freedoms—the entry into force of the Human Rights Act 1998 in the United Kingdom and the coming into being of the full-time permanent Court in Strasbourg. The impact of these developments in the system of human rights protection, both nationally and internationally, is difficult to overestimate. The United Kingdom has witnessed a remarkable flowering of case law under the Act which has already made a major and lasting contribution to Convention jurisprudence. In Strasbourg the stream of judgments and decisions of the new Court—many of the highest importance in the setting of international human rights standards—has continued to flow unabated.

But the success of the Convention system has brought with it problems. The alarming increase in the number of individual applications lodged with the Court, as a consequence of the rapid expansion in the number of Convention States (now some 45) and the growing public awareness within those States of the existence of the Convention system, has intensified the pressures on the Court and given rise to the risk of the system sinking under the weight of its caseload. Concerns for the future of the system have prompted an urgent and intensive debate, both within and outside the Court, in search of a means of reducing the Court's burden. This has resulted not only in the introduction of changes in practice and procedure within the Court to streamline the processing of applications but in the adoption in 2004 of the Fourteenth Protocol to amend the Convention with a view to enabling the Court to cope more effectively with the ever-increasing flow of applications.

One major source of the current problems is the regrettably high proportion of complaints—well in excess of 80% of all applications lodged—which are clearly inadmissible. In too many cases, the failure of the application is attributable to a lack of understanding on the part of applicants and their legal representatives of the procedural requirements for the bringing of an application or of the substantive case law of the Court, or both. The need for a clear, practical and up-to-date

guide to the lodging of an application in Strasbourg, which explains the procedures and practice of the Court, the requirements of admissibility and the main principles established by the Court's case law, has never been more pressing.

I welcomed the first edition of the book as amply filling that need. I warmly welcome the timely new edition, which maintains the high standards already set and which, in addition, contains an expanded analysis of the substantive case law as well as an explanation of the changes of practice and procedure which have already occurred and of the more radical changes proposed under the new Protocol.

Philip Leach is to be congratulated on producing an excellent further edition of a book which has already established a firm place as an indispensable guide to the Convention system.

Sir Nicolas Bratza
European Court of Human Rights
Strasbourg

Preface

This book, now in its second edition, is intended to provide a practical guide to taking cases to the European Court of Human Rights. Since the first edition was published, in 2001, the number of Convention states has risen to 45, with, most recently, Serbia and Montenegro having acceded to the Council of Europe in April 2003. It is intended that this book will provide a resource for lawyers and non-governmental organisations (NGOs) (and individual applicants themselves) across the range of Council of Europe states, as well as for lawyers in the UK. It was suggested in the preface to the first edition that in its first 50 years, the European Convention system has had a profound effect in upholding and developing human rights standards across Europe. Applicants have been vindicated, but more importantly, European Court judgments have forced significant changes in domestic law, and in national policy and practice. Applying the principle that the European Convention on Human Rights is a 'living instrument', the European Court continues to breathe new life into a system devised in the 1940s. The Court has continued not only to set the limits of state interference with Convention rights, but also, utilising the notion of positive obligations, it continues to redefine the positive steps that states must take in order to comply with the Convention standards, in areas such as victims' rights and in relation to the broad panoply of the right to respect for private and family life. Furthermore, the Court has shown welcome signs of extending the positive obligations on the state where there is evidence of racial discrimination by public officials. The Court's judgments have arguably had an increasing focus on democratic accountability in Europe, notably in relation to the dissolution of political parties, disproportionate limitations on the activities of minority rights groups, unjustifiable restrictions being placed on prospective parliamentary candidates and bars on particular groups, such as prisoners, from voting. The Court continues to carry out its critical fact-finding role by, exceptionally, sending judicial delegations to hear witnesses in states which have failed to carry out an adequate fact-finding process. Nor will the Court necessarily permit a state to evade its obligations where it

acts 'extra-territorially', or by seeking to blame an overly-zealous 'autonomous province'. There are signs too that the Court is willing to take a more interventionist approach, for example, by moving beyond the bounds of declaratory relief and requiring states to return unlawfully expropriated property or even to release unlawfully held detainees. Further progress has been achieved in making Europe a death penalty-free zone, with the coming into force in July 2003 of Protocol No. 13, which abolishes the death penalty in times of war.

The Court, and the Convention system, is not of course without its critics. The most problematic aspect of the process has continued to be the excessive length of time within which the Court adjudicates on cases. The adoption of Protocol No. 11 in 1998 has not improved the system in the way that was hoped and in May 2004 the Committee of Ministers of the Council of Europe adopted further measures, in Protocol No. 14, which will introduce more radical changes. Although Protocol No. 14 is not expected to come into force until 2006, a discussion of its key points is included in this edition.

CONTENTS

Chapter 1 provides an overview of the Convention system and the main institutions. The practice and procedure of the Court are explained in chapters 2 to 4, from lodging the initial application to the Court to the enforcement of judgments. These chapters include explanations of the Strasbourg legal aid system and the system for obtaining emergency relief (interim measures). Included in the appendices are the Court Rules, the Court's application form, precedent applications and other European Court pleadings. There is also a case study of an application in which judgment was published by the Court in 2003 (*Peck* v *UK*—chapter 11). Chapter 5 explains the Court's admissibility rules which are a critical element in the Convention system. Chapter 6 discusses the most important underlying principles of the Convention and chapter 7 provides an overview of the Convention case law, including Articles 1 to 14 of the European Convention, together with Protocol Nos 1, 4, 6, 7 and 13. Sources of Convention case law, including law reports, journals, websites and texts, are set out in chapter 12. Chapter 8 deals with derogation and reservation from the Convention. Chapter 9 explains the principles applied by the Court in awarding 'just satisfaction' (compensation and costs) and includes a table of awards in selected cases from 2001 to 2004. Protocol No. 12 to the Convention will create a new, freestanding prohibition of discrimination, and is described in chapter 10. At the time of going to print, Protocol No. 12 received the requisite tenth ratification and it is due to enter into force on 1 April 2005. Protocol No. 14, which will introduce a number of significant changes to the Convention system, is outlined in chapter 1 and its provisions are referred to, where relevant, throughout the text. I have endeavoured to set out the law and practice of the Court up to October 2004.

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Philip Leach
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