

de Bruyn, Donatienne, Sebastien Depre, Michel Kaiser, Pierre Lambert, Bruno Lambaert, Marc Verdussen. *Les Exceptions Preliminaires dans la Convention europeene des droits de l'homme*. Bruxelles: Bruylant, 1997.

The process and substance of law are understood to be inextricably interwoven in law, and mutually defining aspects of any legal system, and the system of the ECHR is no exception to this symbiosis. In this valuable collection of essays devoted to one critical dimension of the procedures of the ECHR, namely the preliminary exceptions or conditions of access to the Convention system, the centrality of process to substance is well demonstrated.

This work traces the development of the preliminary conditions as firstly formal conditions for the Court to be seized of an application under Articles 24 and 25. In so doing, it examines the dynamic definition of notions at the core of these provisions: the definition of 'the state' aligned to the concept of jurisdiction and responsibility, and the notion of 'violation' which includes acts as well as omissions. Next, the analysis reviews the rights of access and the definition of applicant as 'victim of a violation', and related issues of *locus standi* within the Convention system.

The authors devote considerable analysis to the complex way in which substantive principles are upheld within the procedural rules of the Convention. In particular, the Court and Commission's self-conscious perception of the Convention as a subsidiary supervisory mechanism speaks of a deep understanding of the balance at the heart of the Convention between Strasbourg and its Member State signatories, as well as of the fact that the Convention remains an instrument of international law operationalized through the medium of domestic law. The analysis highlights the pragmatism of the Court's interpretation of these rules in respect of exhaustion of remedies (Article 26) and the obligation of states to provide effective recourse at national level to quell the potential contradiction be-

tween the notion of the state as author of a violation and the state as primary guarantor of Convention rights and freedoms.

The marked contrast between the rights of access to the Strasbourg organs of states (under the rarely used inter-state application procedure of Article 24) and those of other persons, groups or NGOs is highlighted as yet another defining dimension of the Court's conception of the ECHR system. The notion of 'victim' as developed under the Convention, which pertains to the latter only, is discussed in great detail, and the limits of this modality is debated in a variety of contexts including the bar on *actio popularis* and applications 'in abstracto'. Once again, the differences between the principles that bind individual and state petitions is examined to illustrate another of the fundamental principles of the Convention system which distinguishes it from classic international law treaties: the absence of a principle of simple reciprocity in the ECHR system. Thus, states are held to be bound by 'objective' obligations which confer a collective benefit and can be defended by any constituent state member of that collective which dispenses with any need for victims of the violation to be nationals of the applicant state.

Jurisprudential limitations, such as the principle of *non bis in idem*, are placed central to the Convention's aims and structure. The various jurisdictional limitations are also viewed as pivotal and are extrapolated in great detail, including those which are territorial, temporal and substantive or material in nature, as well as those which relate directly to its formal procedure: all of these restrictions are posited within the matrix of the Convention structure and jurisprudence in a way that clarifies their substantive import and systemic significance. Once again, the analysis is underpinned with a strong conception of the balances required for the successful and efficient operation of the ECHR: the need for equilibrium between the autonomy of states and the central authority of the Convention, as well as within the Convention itself.

The value of this work is quite apparent: it binds a meticulous review of all essential

aspects of the formal and procedural dimensions of the Convention system with insightful analysis of their substantive import for the ECHR, combining this with a vision of this symbiosis within the balance of power dynamics inherent in the Convention system. What is, however, lacking is an insight into the ways in which Protocol 11 might affect the procedure of the Convention and the ramifications that this may have on the substance of European human rights protection.

*New College,
Oxford University*

Slobhan McInerney

Albros-Llorens, Albertina. *Private Parties in European Community law — Challenging Community Measures*. Oxford: Clarendon Press, 1996.

The rules governing judicial review in any legal system remain pivotal to the way in which the system defines legality as well as its chosen conception of democracy. Given this centrality, the rules governing judicial review, in particular those relating to access to court and *locus standi*, must also be understood as symbiotically related to the conception of democracy embraced by a legal system. Judicial review within EC law is characteristic in some respects and atypical in others: it accounts for the traditional action for annulment (under Article 173) on a variety of bases, such as lack of competence, illegality, infringement of an essential procedural requirement, infringement of the Treaty or any rule of law relating to its application and misuse of powers. Such action is available for most legal acts adopted by the institutions of the Community, other than recommendations and opinions.

Under this article, there exist privileged applicants: Member States, the Council and the Commission (and the European Parliament and the ECB for the purposes of protecting their prerogatives). Beyond this category, there is that of non-privileged applicants, such as natural or legal persons, who enjoy less

extensive rights to challenge acts through judicial review by virtue of the strict rules of *locus standi* imposed upon them.

It is ironic that a 'new legal order' such as that of Community should define the rights of individual applicants in such a restrictive manner, given the idea that individuals (natural or legal persons) are understood to be the subjects of EC law as the bearers of both rights and duties, and are therefore recognized as participants in the process of European legal integration as much as states are, and as distinct from the classic model of international law.

Albros-Llorens' work explores in painstaking detail the position of private parties within the judicial review system of EC law. She tracks the evolution of the various conditions of *locus standi* for private parties taking actions for annulment in respect of decisions, and also of measures which, while they emerge in the form of regulations (or directives), are of 'direct and individual concern' to individual applicants. Her work notes this feature of EC law as one which highlights the fact that there exists no real or discernible distinction between administrative and legislative acts in EC law and the recognition on the part of the ECJ that a reasonable standard of legality within the Community must not be evaded through a simple choice of legislative form.

She traces the evolution of the position of 'non-privileged applicants' in these circumstances from the draconian textual conditions laid down in the Treaty, through the case law of the ECJ which has demonstrated a gradual liberalization of these rules on *locus standi*, developing a definition of 'concern' close to that which prevails at a national level. This work is meticulous in its treatment of the various tests of admissibility employed by the Court in respect of regulations and decisions and it is equally rigorous in its analysis of the relationship between Article 173 and preliminary rulings under Article 177 (1)(b), as well as the plea of illegality (Article 184) and the actions for failure to act (Article 175), actions for damages (Article 215). She analyses the similarities between the core action of the work and these related actions by high-