

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-

lighting how and to what extent they are substitutable and where there remain lacunae.

Her conclusions and recommendations are perceptive and pertinent: she notes the current definitions as emphasizing the existence of individual rights (individual concern) and the existence of a relationship of causality between the decision and the damage inflicted on the applicant.

There is explicit recognition of the fact that the strictness of the rules on *locus standi* have had a profound effect on Community law through the frequent result of private parties being deprived of all protection in respect of potentially illegal Community acts. What is also made clear is the fact that while an excessively liberal interpretation of the rules on *locus standi* (especially in respect of regulations) would imperil the stability of the Community secondary legislation, the gaps which still exist in respect of private persons' access to judicial review jeopardize the democratic credentials of the Community. Moreover, there exist no principled reasons for which the rules of admissibility of individual actions should not accommodate a more participatory democratic conception of individual engagement in the upholding of legality and the fundamental general principles of Community law.

What is however missing from this work is a more principled argument about the lacunae which remain in the judicial review system of the Community, and the ways in which alternative actions are inadequate in practice and severely lacking in principle.

There are fundamental critiques to be levelled against the rules on *locus standi* in respect of what sort of vision of democracy they reflect at the heart of the Community, as well as attacks on the realization and upholding of fundamental rights and a balanced rights discourse which are not addressed in sufficient depth in this work: such a dimension would seem the natural complement to a detailed review of the case law and rules in the area and it is regrettably lacking.

From a very early stage, individuals have been conceived of as agents of, and partici-

pants in, EC law, and viewed as holders of rights and duties. It is clear that the current rules on *locus standi* for judicial review, notwithstanding the developments fostered in ECJ jurisprudence, do not adequately acknowledge this, and represent yet another significant dimension of the democratic deficit of the Union.

New College, *Stobhan McInerney*
Oxford University

Boeles, Peter. *Fair Immigration Procedure in Europe*. London, Boston, The Hague: Martinus Nijhoff Publishers, 1997. Pp. xviii, 477. Index.

This book results from the author's dissertation defended in Dutch at the Catholic University of Nijmegen in 1995. It explores the legal remedies which should be available to an individual in relation to actions or failures to act by a state in immigration proceedings concerning entry, residence and expulsion, and concentrates on international law as applicable to the 15 Member States of the European Union. By effective legal remedies or proceedings the author means remedies available to the individual against the state which meet certain conditions and which, as a result, maximize the chance of effective legal protection in individual cases.

Six elements are chosen to assess whether the norms which may apply to national immigration proceedings (*inter alia*, UN, ILO, Council of Europe, and European Union customary law and general principles) maximize the chance of effective legal protection in this field: proceedings must exist, be accessible, and have the character of 'judicial proceedings'; legal and linguistic assistance to the parties must be guaranteed; the individual must be able to break the power of a *fait accompli* by, for example, requesting interim measures; the procedure for the establishment of facts and the Court's margin of appreciation must make it possible for the court or tribunal to take account of the essential aspects of the case and an appeal at a higher level must be available.