THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Fourth Edition

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PREFACE TO THE FOURTH EDITION

The publication of this fourth edition of Theory and Practice of the European Convention on Human Rights is a cause of great satisfaction and gratitude for the editors. The preparation of the previous edition of the book was completed before Protocol No. 11 to the Convention, with its fundamental procedural reforms, had entered into force. Consequently, the “new” Court, which as a full-time court would produce a very extensive case law, had not yet been established. Therefore, at that moment it was already evident that the preparations for a next edition were imminent and would lead to drastic revision and considerable extension of the book.

This demanding task could only be accomplished through the willingness of those who contributed to the third edition as well as three additional experts who joined the group of authors in relation to this edition, to put so much effort and time into researching the case law of the “new” Court and to revise their respective chapters while taking developments in that case law into account. Notwithstanding their efforts however, this fourth edition would not have been completed without the support of the law firm of Pels Rijcken & Droogleever Fortuijn, which enabled one of its partners, Arjen van Rijn, to use time and facilities of the firm in order to coordinate the work of the editors and authors, and liaise with the publisher.

As pointed out, the entry into force of Protocol No. 11 and the extensive case law of the “new” Court made a drastic revision of most of the chapters necessary, even including complete rewriting of large parts of the text. It is therefore only fair that the name of the “reviser” is expressly mentioned at the beginning of each chapter. In order to keep the resulting extension of the book within reasonable limits, the “case law” of the former Commission has been deleted insofar as inclusion of such case law was deemed no longer necessary to shed light on the development of the jurisprudence concerning the Convention or that the Commission’s case law has been incorporated or replaced by case law of the Court. As part of the same effort to keep the size of the volume manageable, references to the case law have been simplified, assuming that most readers will not turn to the official reports but rather to the site of the Court for further reference. Therefore, the references only provide the information necessary to identify the case and to enable the reader to find access to the full text of the judgment, decision or report concerned. The register of cases annexed to the book contains the full name of the parties to each case referred to. As in the previous editions of this book references to literature are almost completely absent; these references are
easily available to the reader through other sources and would have overburdened the footnotes.

It almost seems a whim of fate that, whilst the previous edition had to anticipate the entry into force of Protocol No. 11, the date of which was uncertain at the moment of writing, the present edition has to anticipate the entry into force of Protocol No. 14, which was also unpredictable at the moment the editing had to be concluded. In each of the relevant chapters the future effects of Protocol No. 14 have been indicated, which however would appear to be less far-reaching than those of Protocol No. 11.

The editors gratefully acknowledge the assistance that they, as well as the authors, received from others in relation to research, documentation and secretarial support. This assistance has been of vital importance to an operation that has acquired mammoth proportions. In particular they wish to mention with appreciation the most valuable assistance of Ms. Fleur van der Meer of the law firm of Pels Rijcken & Droogleever Fortuijn, Ms. Ingrid Neumann of the Netherlands Council of State and Ms. Desislava Stoitchkova of the Netherlands Institute of Human Rights (SIM). In addition the editors also gratefully mention the excellent cooperation with the new publisher of the book, Intersentia. Mr. Kris Moeremans and his staff have shown an invaluable and unfailing capacity for indulgence, inventiveness and perseverance, as well as a genuine appreciation of pure quality. It was a real pleasure to embark on this project with them and to be able to disembark at the destination that we all had in mind.

July 2006

Pieter van Dijk
Fried van Hoof
Arjen van Rijn
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LIST OF ABBREVIATIONS

A. Publications of the European Court of Human Rights; Judgments and Decisions, Series A
AJIL American Journal of International Law
Appl(s) Application(s) lodged with the Commission under Article 24 of the Convention
B. Publications of the European Court of Human Rights; Pleadings, Oral Arguments and Documents, Series B
Coll. Collection of Decisions of the European Commission of Human Rights
Cons. Ass. Consultative Assembly of the Council of Europe
D&R Decisions and Reports of the European Commission of Human Rights
HRLJ Human Rights Law Journal
ICJ Reports International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ILM International Legal Materials
ILO International Labour Organization
Para(s) Paragraph(s)
Parl. Ass. Parliamentary Assembly of the Council of Europe
RCADI Recueil des Cours de l’Académie de Droit International de la Haye
Reports Reports of Judgments and Decisions. Publication of the case-law of the Commission and the Court (as from 1996)
Res. Resolution
UN United Nations
UN Doc. United Nations Documents
UNHCR United Nations High Commissioner for Refugees
UNTS United Nations Treaty Series
Yearbook Yearbook of the European Convention on Human Rights