

Institution: Middlesex University		
Unit of Assessment: 18 LAW		
Title of case study: Strengthening Human Rights and the Rule of Law within the Council of Europe Region		
Period when the underpinning research was undertaken: Throughout the period from 1 January 2000 to 31 December 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Philip Leach Alice Donald	Professor Senior Lecturer	January 2013 onward January 2013 onward
Period when the claimed impact occurred: Throughout the period from 1 August 2013 to 31 July 2020.		
Is this case study continued from a case study submitted in 2014? Yes		
<p>1. Summary of the impact</p> <p>Applied legal research undertaken individually and jointly by Leach and Donald has provided strategic direction to litigation at the European Court of Human Rights against states in the post-Soviet region undertaken by Middlesex's European Human Rights Advocacy Centre (EHRAC). Since 2014, justice for 519 individuals in 92 cases has been secured. Victims have been awarded compensation of €5,455,000. Consequent changes have been introduced in laws, practice and policy, and a new generation of human rights lawyers has benefited from related advocacy, mentoring and training. Guided by the research reported below, EHRAC has been instrumental not only in extending human rights protection in the region but in strengthening the rule of law in Europe and developing jurisprudence internationally.</p>		
<p>2. Underpinning research</p> <p>Academic research, allied with strategic litigation, creates synergy between the strands of EHRAC's work, sustained by its unique institutional format as a litigation and mentoring project situated within a university. Led by Leach, EHRAC comprises 16 lawyers and programme staff who mentor litigating human rights NGOs and lawyers in Russia, Georgia, Ukraine, Azerbaijan and Armenia. Research by Leach and Donald, including analysis of substantive human rights law and practice and the implementation of judgments, continuously underpins EHRAC's ground-breaking litigation, which exposes systemic violations in respect of post-conflict societies; state surveillance; judicial independence; political prosecutions and gender-based violence, among other areas.</p> <p>The substantially revised fourth edition of Leach's consolidation of research and practice in <i>Taking a Case to the European Court of Human Rights</i> (OUP, 2017) (1) provides extensive analysis of the ECtHR's law, practice and procedure. It is recognised as a leading source for both practitioners and academics and is available in translation in the former Soviet region. Leach's research also informs EHRAC's strategic litigation in conflict-related cases in Chechnya, South Ossetia, Nagorno-Karabakh and eastern Ukraine/Crimea. His work published by Cambridge University Press (2) analyses the effectiveness of ECtHR jurisprudence and practice in cases concerning the right to life, the domestic investigatory system, the award of reparations and approaches to systemic human rights abuses. It identifies a lacuna in norms of accountability which is accentuated during internal conflict and states of emergency: a gap addressed by cases including Abakarova v Russia (2015). The research also assesses problems of evidence-gathering, a theme developed in an article</p>		

analysing ECtHR fact-finding in the *Max Planck Encyclopaedia of International Procedural Law* (3). Such inherent difficulties in securing reliable evidence in conflict settings led to EHRAC collaborating with the multi-disciplinary team of investigators at [Forensic Architecture](#) (Goldsmiths, University of London) to produce a web-based platform concerned with evidence of Russian military involvement in eastern Ukraine in 2014, submitted to the Court in 2019 in *Ponomarenko v Russia*.

Efforts towards improving the implementation of judgments secured through EHRAC litigation have been informed by other research conducted by Donald and Leach as Co-Investigators in the ESRC-funded [Human Rights Law Implementation Project](#) (2015-2019). That project involved qualitative research into the implementation of decisions issued by supranational human rights bodies (including several EHRAC cases) (4). Journal articles co-authored variously by Donald, Leach and research associate Speck analyse the means, roles and impact of supranational mechanisms in triggering domestic implementation. Donald and Speck's article in the *Human Rights Law Review* provided the first comprehensive statistical and qualitative analysis of the ECtHR's remedial practice and recommendations aimed at strengthening the implementation of judgments (5).

Domestic actors, in particular parliaments, are better able to strengthen implementation as a result of Donald and Leach's recommendations. Empirical research disseminated in the form of a [handbook](#) to all parliamentarians who are delegates to the Parliamentary Assembly of the Council of Europe (PACE) demonstrates that most parliamentary human rights bodies are embryonic or politically enfeebled, and makes recommendations as to how to strengthen their structures, working methods and underpinning principles (6).

3) References to the research

- (1) P. Leach, *Taking a Case to the European Court of Human Rights*, Oxford University Press, Oxford, 2017 (fourth edition: 699 pp). (Russian translation (2006); Serbian translation (2007); Georgian translation (2014) published by Georgian Bar Association, funded by EU.
- (2) P. Leach, 'Egregious human rights violations in Chechnya: appraising the pursuit of justice'. In: *Russia and the European Court of Human Rights: the Strasbourg effect*. Mälksoo, Lauri and Benedek, Wolfgang, eds. Cambridge University Press, Cambridge, 2017 (pp. 255-294).
- (3) P. Leach, Fact-finding by the European Court of Human Rights. In: *Max Planck Encyclopaedia of International Procedural Law*. Ruiz Fabri, Helene, ed. Oxford University Press, Oxford, 2017.
- (4) A. Donald, P. Leach and A. Speck co-edited a [special issue](#) of the *Journal of Human Rights Practice* (Oxford University Press) (12(1) 2020) as outputs of the HRLIP. In the special issue they published three co-authored articles: Leach, Murray and Sandoval (2020) 'Monitoring, cajoling and promoting dialogue – what role for supranational human rights bodies in the implementation of individual decisions?'; Donald and Speck (2020), 'The dynamics of human rights implementation: Lessons from qualitative research in Europe'; Donald, Long and Speck (2020) 'Identifying and assessing the implementation of human rights decisions'.
- (5) A. Donald and A. Speck, 'The European Court of Human Rights' Remedial Practice and its Impact on the Execution of Judgments', *Human Rights Law Review* 19(1) (2019) 83–11.

(6) A. Donald and P. Leach, *Parliaments and the European Court of Human Rights*, Oxford University Press, 2016 (342 pp, ISBN 9780198734246).

4) Details of the impact

The reach and significance of EHRAC's impact since 2014 can be assessed, inter alia, through the number of cases won (92), and the nature and extent of redress secured for victims. Compensation is secured (€5,455,000 since 2014) as well as other forms of non-monetary redress (Source 10). The most far-reaching impacts are where, following a violation with a structural or systemic cause, the state is obliged to change laws or practices, thereby guaranteeing that the case has an impact not only for the immediate victims but also for wider beneficiary groups. Furthermore, judgments of the ECtHR in EHRAC cases have set new legal standards that have been cited and applied by other regional human rights courts and apex national courts (e.g. in India and the Netherlands; Source 9). EHRAC has an "outstanding record of exposing and securing accountability for human rights violations in the former Soviet region, in litigation on behalf of hundreds of victims before the European Court of Human Rights and UN human rights treaty bodies" (Source 1). EHRAC's work on the implementation of judgments has been described as "exemplary" and as a "great benefit not only to the individuals represented, but to the European human rights community as a whole" (Source 5).

The majority of the EHRAC judgments secured concern violations of the ECHR committed by the Russian security services in the North Caucasus (on behalf of 389 individual applicants, securing total compensation of €4,878,266) (Source 10). These relate to enforced disappearances, extra-judicial killings and other egregious violations committed during Russian security operations. The OSCE has cited EHRAC cases concerning Chechnya as being influential, inter alia, on challenging the persecution of members of the LGBTI community in Russia (Source 9). The judgment in [Tagayeva v Russia](#) (2017), concerning the Beslan school siege, found that failings in the authorities' response contributed to 334 fatalities and hundreds of casualties. Translated into eight languages, this judgment is now a leading authority on the right to life and has been extensively cited in subsequent ECtHR judgments (Source 9).

More than a million refugees and displaced people stand to benefit from the establishment of a property claims mechanism required by the Grand Chamber judgment in [Sargsyan v Azerbaijan](#) (2015), which upheld the Convention rights of a family displaced by the Nagorno-Karabakh conflict in the early 1990s. It was cited by OUP as one of the "top ten developments in international law in 2015" (Source 9).

Leach's research on evidential problems led to the development of a unique algorithm which is being made available as a research tool for human rights investigations and in support of communities exposed to state violence and persecution. The algorithm was developed in the context of the interactive platform co-created by EHRAC and Forensic Architecture (noted in section 2) to provide visual evidence to the ECtHR of Russian military involvement in eastern Ukraine (Source 6). It is the first time that evidence of this type has been submitted to the European Court of Human Rights.

Victims of domestic violence are now better protected as a consequence of [X and Y v Georgia](#) (2015), EHRAC's landmark case before the UN Committee on the Elimination of Discrimination against Women (CEDAW), which was the first such complaint against

Georgia to be decided by an international body. It required Georgia not only to compensate the victims but also to instigate widespread reforms aimed at ensuring a zero-tolerance policy towards violence against women. The decision “has led to a plethora of legal and administrative reforms that have transformed the state provision for actual and potential victims of domestic violence” (Source 3).

The ECtHR Grand Chamber judgment in [Roman Zakharov v Russia](#) (2015), cited by OUP as one of the “top ten developments in international law” that year (Source 9), has “established new best practice principles for regulating mass surveillance, essentially providing a blueprint for assessing whether surveillance regimes respect Convention rights” (Source 1). The judgment has been cited numerous times by the ECtHR itself, the Indian Supreme Court, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Privacy International and is available on the Court’s website in 15 languages (Source 9).

Protection of judicial independence in Ukraine has been reinforced following [Oleksandr Volkov v Ukraine](#) (2013), concerning the politically driven dismissal of a supreme court judge. In 2015, Mr Volkov was reinstated. As a sign of the judgment’s continuing, broader impact, the ECtHR’s proscription of politicians’ control over the appointment and dismissal of judges has led directly to a national programme of legislative reform and amendments to the Ukrainian Constitution. The judgment “had very significant impacts, not only for Mr Volkov himself, but also more fundamentally in changing domestic laws concerning the judiciary and setting new international standards as regards the disciplinary proceedings and dismissals of judges” (Source 4). The Polish Ombudsman, Adam Bodnar, states that *Volkov* “will be of great use” in ongoing litigation before the ECtHR challenging the suspension of three Polish judges (Source 9).

EHRAC’s litigation of political prosecution cases has “set important precedents” and produced “remarkable results” (Source 5). [Rasul Jafarov v Azerbaijan](#) (2016) and [Aliyev v Azerbaijan](#) (2018) successfully highlighted the use of criminal law procedures for political ends against human rights defenders. Mr Jafarov was released from prison immediately and his conviction was quashed in 2020. The Grand Chamber judgment in [Merabishvili v Georgia](#) (2017) established that there had been an abuse of process in criminal proceedings against a former Prime Minister.

EHRAC’s research-informed litigation strategy is used as a model to mentor lawyers (83 since 2014) working for 15 human rights NGOs in five former Soviet states. Training and mentoring have helped develop the legal arguments, skills in gathering evidence, and English language ability of a new generation of human rights lawyers, often in repressive domestic contexts, thereby raising the quality of their litigation before the ECtHR. An NGO partner in Georgia refers to EHRAC’s “valuable work in developing and enhancing the litigation skills of the legal community”, “huge support and expertise” and “inspirational attitude” (Source 3). Vera Devine, independent evaluator for the European Commission, commented that “EHRAC’s approach to co-operation with partners is absolutely unique in the region ... [Its] approach is particularly relevant given the structural weaknesses of the national education systems for the legal professions, which, across the [target region], lack an emphasis on the development of practical skills” (Source 7). Leach’s *Taking a Case to the European Court of Human Rights* is described as “a lodestar for human rights lawyers and NGOs working in the region, particularly given the paucity of legal training at national

level in respect of both human rights law and the development of practical advocacy skills” (Source 1).

The “benchmark for effective parliamentary human rights practice” within the Council of Europe has been set by another stream of EHRAC’s work (Source 2). Donald (with Speck) was commissioned by the Parliamentary Assembly to write a handbook, [National parliaments as guarantors of human rights in Europe](#), now translated into twelve languages. It is the Assembly’s “principal reference point” in its capacity-building work with parliaments, “identifying pockets of effective practice and equipping parliamentarians to emulate them” (Source 2). Donald has harnessed the research to train parliamentarians in human rights matters (Georgia (2015); Strasbourg (2016 & 2017); Serbia and Ukraine (2020)). The European Implementation Network (EIN) “has directly applied the insights gained from Donald and Leach’s research in developing effective engagement with Strasbourg institutions ... and [promoting] the formation of parliamentary mechanisms in Council of Europe states” (Source 5). Donald and Leach’s 2016 book on parliaments and human rights was cited by Lord Reed in the Supreme Court in a case on abortion rights in Northern Ireland, and by the President of the ECtHR, Judge Robert Spano, who praised its “particularly insightful” contribution to debate about the Court’s relationship with national legislatures (Source 8).

Other indicators of esteem for EHRAC’s work include Leach’s award as [Human Rights Lawyer of the Year](#) by the Law Society of England and Wales in 2015. Former ECtHR Judge Paulo Pinto de Albuquerque has also referred to the influence of Leach and Donald’s work on debate surrounding reform of the Court (Source 8).

5) Sources to corroborate the impact

1-5. Statements from: 1. Sir Nicolas Bratza, former President of the ECtHR; 2. Andrew Drzemczewski, former head of Secretariat, Legal Affairs Committee, Parliamentary Assembly of the Council of Europe; 3. Nikoloz Simonishvili, Chairperson, Georgian Young Lawyers' Association; 4. Pavlo Pushkar, Department for the Execution of Judgments, Council of Europe; 5. George Stafford, Director, European Implementation Network.

6. [Online 'platform'](#) co-created by EHRAC and Forensic Architecture

7. Evaluation funded by European Instrument for Democracy and Human Rights (2018).

8. Schedule 1: judicial and extra-judicial citations of research by Leach and Donald.

9. Schedule 2: citations by judges, international institutions and academic commentators evidencing the impact of EHRAC cases and research on the development of human rights jurisprudence internationally.

10. EHRAC website (database of [cases](#) and [achievements](#)).