

Grabenwarter

**European Convention
on Human Rights
Commentary**

**C.H. Beck · Hart · Nomos
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– Commentary –

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by

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Preface

The European Convention on Human Rights entered into force sixty years ago, on 3 September 1953. Over the decades, it has become the most effective international human rights protection system there is. For a time, there were two separate independent bodies – the Commission and the Court – that developed the case law, one step at a time, and made the Convention increasingly relevant.

Fifteen years ago, on 1 November 1998, a new permanent Court replaced these two judicial organs. This new Court faced a greater number and new types of member states and had to cope with a dramatic increase in its applications. Reform measures brought punctual solutions, but did not solve the problem of the Court's excessive workload. Against this background, it is remarkable that the European Court of Human Rights was capable of maintaining its high-quality reasoning in the majority of its judicial activities: in the Chambers' judgments and in those of the Grand Chamber. However, inconsistency in the case law has appeared, resulting in increasing criticism of the Court. This is not the fault of anyone in particular at the Court. It is the inevitable result of a Court that has reached its quantitative limits. From an external perspective, the Court has done everything in its power to increase its efficiency as well as to maintain the quality of its judgments. Other measures lie in the hands of the member states.

The aim of this commentary is to help in understanding the working of the European Convention on Human Rights and the Court's case law. Over the last decade, the author has published five editions of a textbook in German. To write a commentary in English turned out to be much more difficult, not only for language reasons (native speakers are kindly asked to be considerate with foreign authors), but mainly because it is impossible to find a selection of cases that is adequate for all member states of the Council of Europe. It is a challenge to provide a comprehensive commentary on most of the major legal questions decided and discussed up until today.

The author would like to thank, first of all, *Wilhelm Warth* of the Beck Verlag. He came up with the idea for this book, encouraged me to pursue it and applied the right amount of pressure on me to finish the commentary. My special thanks go to my assistants at the institute, who have provided me with the much-needed support for this project. *Christina Hochhauser*, *Franziska Paefgen*, *Nina Palmstorfer* and *Eva-Maria Tos* were responsible for translating major parts of the text into English and adding recent case law. They have gone so far as to suspend their personal projects on a number of occasions during the last months in order to support me, which I have greatly appreciated. *Anna Katharina Struth*, who joined the team during the last weeks of this project, was also of great help.

Lastly, I hope that this commentary will be useful for those who work with the Convention, be it at universities, in law firms or in a court of law. No publication is

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free of mistakes, therefore should readers find errors or just find that something could be clarified, they are kindly invited to notify this by e-mail to the Institute (sekretariat.grabenwarter@wu.ac.at).

October 2013

Christoph Grabenwarter

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List of Abbreviations

a.....	and
a.o.	and others
ACHR.....	American Convention on Human Rights
AJIL.....	American Journal of International Law
ALB	Albania
AND	Andorra
ARM	Armenia
AUT	Austria
AZE	Azerbaijan
BVerfG	German Constitutional Court
BYIL.....	British Yearbook of International Law
BEL	Belgium
BIH	Bosnia and Herzegovina
BUL	Bulgaria
CISA.....	Convention Implementing the Schengen Agreement
CJEU	Court of Justice of the EU
the Convention.....	European Convention on Human Rights
the Court.....	European Court of Human Rights
CRO	Croatia
CFR	Charter of Fundamental Rights of the European Union
CYP	Cyprus
CZE	Czech Republic
DPA	Dayton Peace Agreement
DEN	Denmark
e.g.	exempli gratia/for example
EComHR.....	European Commission of Human Rights
ECtHR.....	European Court of Human Rights
ed.	Editor
EEA	European Economic Area
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
ELR.....	European Law Review
ESP	Spain
EST	Estonia
et al.....	et alii/and others
et seq.....	et sequens/and the following one(s)
EU.....	European Union
EU.....	Charter Charter of Fundamental Rights of the EU
FIN	Finland
FRA	France
GC.....	Grand Chamber
GDR.....	German Democratic Republic
GEO	Georgia
GER	Germany
GLJ	German Law Journal

List of Abbreviations

GRE	Greece
HUN	Hungary
HRLJ	Human Rights Law Journal
IACHPR.....	Inter-American Court of Human Rights
ICCPR.....	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IRL	Ireland
ISL	Iceland
ITA	Italy
LAT	Latvia
LIE	Liechtenstein
LTU	Lithuania
LUX	Luxembourg
m.n.	marginal note
MDA	Moldova
MKD	Macedonia
MLT	Malta
MNE	Montenegro
MON	Monaco
NED	Netherlands
No.....	number
NOR	Norway
p.....	page
para.....	paragraph
paras.....	paragraphs
PJCCM	Police and Judicial Cooperation in Criminal Matters
POL.....	Poland
POR	Portugal
pp.....	pages
RDH.....	Revue des droits de l'homme
RFDA.....	Revue française de droit administratif
RGDIP	Revue générale de droit international public
ROM	Romania
RTDH.....	Revue trimestrielle des droits de l'homme
RUDH.....	Revue universelle des droits de l'homme
RUS	Russia
SLO	Slovenia
SMR	San Marino
SRB	Serbia
SUI	Switzerland
SVK	Slovakia
SWE	Sweden
TFEU	Treaty of the functioning of the EU
TUR	Turkey
UDHR.....	Universal Declaration of Human Rights
UK	United Kingdom

List of Abbreviations

UKR	Ukraine
UN.....	United Nations
v	versus
VCLT	Vienna Convention on the Law of Treaties

Index of Country Codes

When quoting ECtHR judgments the Member States of the Convention are abbreviated as follows:

ALB	Albania
AND	Andorra
ARM	Armenia
AUT	Austria
AZE	Azerbaijan
BEL	Belgium
BIH	Bosnia and Herzegovina
BUL	Bulgaria
CRO	Croatia
CYP	Cyprus
CZE	Czech Republic
DEN	Denmark
ESP	Spain
EST	Estonia
FIN	Finland
FRA	France
GEO	Georgia
GER	Germany
GRE	Greece
HUN	Hungary
IRL	Ireland
ISL	Iceland
ITA	Italy
LAT	Latvia
LIE	Liechtenstein
LTU	Lithuania
LUX	Luxembourg
MDA	Moldova
MKD	Macedonia
MLT	Malta
MNE	Montenegro
MON	Monaco
NED	Netherlands
NOR	Norway
POL	Poland
POR	Portugal
ROM	Romania
RUS	Russia
SLO	Slovenia
SMR	San Marino
SRB	Serbia
SUI	Switzerland
SVK	Slovakia
SWE	Sweden
TUR	Turkey
UKR	Ukraine
UK	United Kingdom

Bibliography

Clements/Mole/Simmons

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Grabenwarter/Pabel

Harris/O'Boyle/Warbrick

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Author, in: Macdonald/Matscher/Petzold

Author, in: Pettiti/Decaux/Imbert

Reid

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Author, in: de Salvia/Villiger

Velu/Ergec

Villiger

Author, Studies in honour of Gérard J. Wiarda

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Author, Liber Amicorum Luzius Wildhaber

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