

**Grabenwarter**

**European Convention  
on Human Rights  
Commentary**

**C.H. Beck · Hart · Nomos  
Helbing Lichtenhahn Verlag**

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– Commentary –



# European Convention on Human Rights

– Commentary –

by

**Dr. Dr. Christoph Grabenwarter**

Judge at the Austrian Constitutional Court  
Professor of Public and International Law  
Vienna University of Economics and Business  
Institute for European and International Law

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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

## Preface

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



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*Grabenwarter/Pabel*

*Harris/O'Boyle/Warbrick*

*Author*, Studies in honour of Pierre Lambert

*Author*, in: vande Lanotte/Haeck

*Author*, in: Macdonald/Matscher/Petzold

*Author*, in: Pettiti/Decaux/Imbert

*Reid*

*Author*, Studies in memory of Rolv Ryssdal

*Author*, in: de Salvia/Villiger

*Velu/Ergec*

*Villiger*

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