

TABLE OF CONTENTS

List of abbreviations

CHAPTER I

GENERAL SURVEY OF THE EUROPEAN CONVENTION	1
§ 1. The genesis of the Convention	1
§ 2. The structure of the Convention	3
§ 3. The territorial scope of the Convention	7
§ 4. The temporal effect of the Convention	9
§ 5. The effect of the Convention within the national legal system	11
§ 6. "Drittwirkung" (effect on relations between private parties)	15
§ 7. The European Commission of Human Rights	20
§ 8. The European Court of Human Rights	25
§ 9. The Committee of Ministers	29
§ 10. The Secretary General of the Council of Europe	31
§ 11. The right of complaint	32
11.1. Inter-State applications (Art. 24)	33
11.2. Individual applications (Art. 25)	37
§ 12. Excursus: Brief comparison of the system of implementation of the European Convention with that of the U.N. Covenant on Civil and Political Rights	52

CHAPTER II

THE PROCEDURE BEFORE THE EUROPEAN COMMISSION OF HUMAN RIGHTS	61
§ 1. Introduction	61
§ 2. The examination of the admissibility	61
2.1. The admissibility conditions	67
2.2. The application must not be anonymous (Art. 27(1)(a))	68
2.3. The application must not constitute an abuse of the right of complaint (Art. 27(2))	69
2.4. The application must not be substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement unless it contains relevant new information (Art. 27(1)(b))	71

2.5.	The application must not be incompatible with the provisions of the Convention (Art. 27(2))	75
2.6.	The domestic remedies must have been exhausted (Arts 26 and 27(3))	81
2.7.	The application must have been submitted within a period of six months from the date on which the final national decision was taken (Art. 26)	98
2.8.	The application must not be manifestly ill-founded (Art. 27(2))	104
§ 3.	The procedure after an application has been declared admissible	107
3.1.	The examination of the merits (Art. 28(1)(a))	108
3.2.	The friendly settlement (Art. 28(1)(b))	118

CHAPTER III

THE EXAMINATION OF A CASE BY THE EUROPEAN COURT OF HUMAN RIGHTS 133

§ 1.	Introduction	133
§ 2.	Questions of admissibility and jurisdiction in the proceedings before the Court	133
2.1.	The case must have passed through the whole procedure before the Commission and must have been submitted to the Court within a period of three months from the date of the transmission of the report to the Committee of Ministers	134
2.2.	The jurisdiction of the Court <i>ratione personae</i> : active legitimation	135
2.3.	The jurisdiction of the Court <i>ratione personae</i> : passive legitimation	139
2.4.	The jurisdiction of the Court and the examination by the Commission of the compatibility of the application with the provisions of the Convention	142
2.5.	The examination by the Court in relation to the Commission's examination of admissibility	146
§ 3.	The proceedings before the Court	151
§ 4.	The position of the Commission in the proceedings before the Court	161
§ 5.	The position of the individual applicant in the proceedings before the Court	164
§ 6.	The award of compensation under article 50 of the Convention	171
§ 7.	The request for interpretation of a judgment of the Court	185
§ 8.	The request for revision of a judgment	187
§ 9.	Excursus: Advisory jurisdiction of the Court	187

CHAPTER IV

THE EXAMINATION OF A CASE BY THE COMMITTEE OF MINISTERS

§ 1.	Introduction	191
§ 2.	The examination of the case by the Committee of Ministers	192
§ 3.	Comparison of the procedure before the Committee of Ministers with the one before the Court	204

CHAPTER V

THE SUPERVISORY FUNCTION OF THE SECRETARY GENERAL OF THE COUNCIL OF EUROPE

§ 1.	Introduction	207
§ 2.	The reporting procedure under Article 57 of the Convention	209

CHAPTER VI

ANALYSIS OF THE RIGHTS AND FREEDOMS

§ 1.	Introduction	213
§ 2.	Article 2: right of life	216
§ 3.	Article 3: freedom from torture and other inhuman or degrading treatment or punishment	226
§ 4.	Article 4: freedom from slavery, servitude, and forced or compulsory labour	241
§ 5.	Article 5: right to liberty and security of person	251
§ 6.	Article 6: right to a fair and public hearing	294
§ 7.	Article 7: freedom from retrospective effect of penal legislation	358
§ 8.	Article 8: right to respect for privacy	368
§ 9.	Article 9: freedom of thought, conscience and religion	397
§ 10.	Article 10: freedom of expression	407
§ 11.	Article 11: freedom of association and assembly	428
§ 12.	Article 12: right to marry and to found a family	440
§ 13.	Article 1 of Protocol no. 1: right to the peaceful enjoyment of one's possessions	454
§ 14.	Article 2 of Protocol no. 1: right to education	467
§ 15.	Article 3 of Protocol no. 1: free elections by secret ballot	478
§ 16.	Article 1 of Protocol no. 4: prohibition of deprivation of liberty on the ground of inability to fulfil a contractual obligation	488
§ 17.	Article 2 of Protocol no. 4: the right to liberty of movement within the territory of a contracting state, to choose one's residence there, and to leave it	489

§ 18.	Article 3 of Protocol no. 4: prohibition of expulsion of nationals: the right of nationals to be admitted to their own country	494
§ 19.	Article 4 of Protocol no. 4: prohibition of collective expulsion of aliens	498
§ 20.	Article 1 of Protocol no. 6: abolition of death penalty	502
§ 21.	Article 1 of Protocol no. 7: expulsion of aliens	503
§ 22.	Article 2 of Protocol no. 7: the right to review by a higher tribunal	508
§ 23.	Article 3 of Protocol no. 7: compensation for miscarriage of justice	511
§ 24.	Article 4 of Protocol no. 7: ne bis in idem	513
§ 25.	Article 5 of Protocol no. 7: equality of rights and responsibilities between spouses during and after marriage	515

CHAPTER VII

PROVISIONS CONCERNING ENJOYMENT OF THE RIGHTS AND FREEDOMS AND CONCERNING RESTRICTION OF THESE RIGHTS AND FREEDOMS

§ 1.	Introduction	519
§ 2.	Article 13: right to an effective remedy before a national authority	520
§ 3.	Article 14: prohibition of discrimination	532
§ 4.	Article 15: derogation from the rights and freedoms in case of a public emergency	548
§ 5.	Article 16: restrictions on the political activity of aliens	560
§ 6.	Article 17: prohibition of abuse of the rights and freedoms set forth in the Convention and of their limitation to a greater extent than is provided for in the Convention	562
§ 7.	Article 18: prohibition of misuse of power in restricting the rights and freedoms	568
§ 8.	The grounds of restriction, in particular those referred to in Articles 8-11 of the Convention, Article 2 of Protocol no. 4 and Article 1 of Protocol no. 7	573
8.1.	Introduction: the system of the restrictions	573
8.2.	"Inherent Limitations"	575
8.3.	"Prescribed by law"; "in accordance with the law"	578
8.4.	"Necessary in a democratic society in the interest of .../for the protection of ..."; the doctrine of the "margin of appreciation"	583

§ 9. Article 64: the possibility of making reservations	606
Epilogue	615
Bibliography	621
Cited decisions of the Commission on Admissibility	627
Cited reports of the Commission on the Merits	633
Cited judgments of the Court	637
Cited resolutions of the Committee of Ministers	641
Index of subjects	643