Table of Contents

Table of Cases		XV1
Ta	able of Legal Instruments	xxiii
List of Abbreviations		XXV
1	Introduction	1
A	Object and Purpose 1 The Coupling of Business and Fundamental Rights and Freedoms 1 2 The European Convention and Corporate Rights 2	1
R	3 Exposing the Structure of ECHR Protection 4	6
	Overview Materials	8
	Companies and the ECHR: an Overview 1 The Company: Protagonist of Private Business Enterprise 10 2 Companies and the ECHR: Basic Facts 13 3 The System of Private Application: Overview 14 (a) The Admissibility Stage 14 (b) Examination on the Merits 16 4 Providing a Structural Framework: Preliminary Issues 17 (a) The Regulatory State and the Nature of ECHR Obligations 17 (b) ECHR Compliance 18 (c) The Court's Methodology and Mode of Reasoning 20 (i) The Teleological Approach 20 (ii) The Court's Minimalist Reasoning 22	10
2	Companies and the Structure of Convention Protection	25
	An Occasional Sense of Controversy 1 Voices of Dissent: the United Kingdom's ECHR Discourse 26 (a) A Conceptual Mismatch? 27 (b) Ideological and Political Motives 28 (c) Disproportional Litigious Advantages 29 (d) Considerations of Symmetry and Merit 31 2 The ECHR's Singular Human Rights Ideology 32	26
В	Treaty Text and Drafting History 1 The Text Read in Isolation 33 2 Tacit Acceptance in the <i>Travaux Préparatoires</i> 35	32

C	The Convention's Value System	36
	1 The Preamble's Significance 36	
	2 Individual Dignity 37	
	3 Democracy 39	
	(a) Democracy's Importance 40	
	(b) The Pre-eminence of Political Discourse 41 (c) Private Enterprise and Liberal Democracy 42	
	(c) Private Enterprise and Liberal Democracy 42 4 The Rule of Law 44	
	(a) The Convention's Rule of Law Principle 44	
	(b) The Rule of Law and Companies 46	
	5 European Liberalism 47	
	(a) European Liberalism as Convention Value 47	
	(b) Liberalism and Companies' Rights 48	
	(c) Free Enterprise and European Integration 50	
D	Consideration of Whose Interests?	51
	1 What Kinds of Rights and Freedoms? 51	
	(a) Collective and Individual Aspects of Convention Rights 52	
	(b) Economic Aspects of Civil and Political Rights 54	
	2 Objective and Instrumental Functions of Convention Protection 57 (a) The Subjective Approach 57	
	(b) The Objective Approach 58	
	3 Public Interests 60	
	(a) Community Interests 60	
	(b) Sovereignty Concerns 62	
E	A Many-Sided Convention	63
3	The Court's Approach to Corporate Personality	65
A	The 'Victim' Requirement and Shareholders' Claims	67
	1 The 'Victim' Requirement 67	
	2 Shareholding and ECHR Protection 69	
	(a) Protection of Shareholders' Rights 69	
	(i) Shares as Property 70	
	(ii) Shareholder Rights 71(b) Protection of Shareholder Interests: Identification Claims 73	
	(i) The Rights/Interests Distinction 73	
	(ii) 'Veil-piercing' à la Strasbourg 74	
В	The Starting Point: Preservation of Corporate Personality	76
	1 Starting Point: No Identification 76	
	(a) The Agrotexim Case 76	
	(b) The Reach of Agrotexim 78	
	2 Exploring the Court's Approach: the Given Justifications 80	
	(a) Difficulties in Determining Who Can Represent the Company	
	in Strasbourg 80	
	(i) The Reasoning 80 (ii) Sufficiently Coherent? 81	

	(b) Unreasonable Application of the Local Remedies Rule 83	
	(i) The Reasoning 83	
	(ii) Sufficiently Coherent? 84	
	(c) The Comparative Legal Context 87	
	(i) Constitutional Solutions 87	
	(ii) The Barcelona Traction Citation 88	~ *
	3 The Agrotexim Approach in Context 89	
	(a) Concern for the Company's Fundamental Attractiveness 90	
	(b) Structural Aspects of Convention Protection 92	
	(i) Subsidiarity 92 (ii) Demostic Implementation 03	
	(ii) Domestic Implementation 93(iii) Concern for National Interests 93	
C	Disregard for the Corporate Veil in Exceptional Circumstances	95
0	1 The 'Impossibility' Exception 95	
	(a) 'Impossibility' as Ground for Admissibility 95	
	(b) The 'Impossibility' Exception's Rationale 97	
	(i) No Risk of Competing Claims 97	
	(ii) The Court Ascertains Effective Protection of Central	
	Convention Values 98	
	2 The 'Vehicle' Approach 99	
	(a) The Approach of Pine Valley v Ireland 99	
	(b) Explaining the 'Vehicle' Approach 101	
	(i) No Risk of Competing Claims 101	
	(ii) Effective Protection of Shareholder Investment 102	
	3 A Pragmatic Overall Assessment 104	
D	Concluding Observations	108
4	The Court's Response to Hard Cases of Applicability	110
	Hard Cases of Applicability	110
	Object and Purpose as Arguments against Applicability	112
D		112
	1 Article 8(1): Business Premises as a Company's 'Home' 113 (a) A Distinction between the Private Sphere and General Private Activity 113	
	(b) Article 8 Primarily Protects the Natural Person 114	
	(c) Absence of 'Fit' with Philosophical Justifications 116	
	2 Article 10(1): (Corporate) Commercial Expression 117	
	(a) Defining 'Commercial Expression' 117	
	(b) The Rationale for Free Expression Does Not Fit 119	
	(i) The Democracy Argument 120	
	(ii) Individual Self-Fulfilment 121	
	(iii) Pursuit of Truth 122	
	3 Article 41: Companies' Compensation for Non-pecuniary Loss 122	
	(a) Cogent Reasons for Concern? 122	
	(b) Contested Opinions and Probable Causes 124	
	(i) Difficulties in Determining the Meaning of Non-pecuniary Loss 124	
	(ii) Rhetorical Incompatibility 126	

C	The Court's Favourable Response 128	
	1 Article 10 and Corporate Commercial Expression:	
	Autronic AG v Switzerland 129	
	2 Article 41 and Monetary Compensation for Non-pecuniary	
	Loss: Comingersoll SA v Portugal 130	
	3 Article 8 and Corporate 'Home' Protection: Colas Est SA	
	and Others v France 132	
D	A Revamped Teleology	134
,	1 Rationalizing the Court's Approach 134	101
	(a) Avant-Garde Jurisprudence 134	
	(b) A Revamped Teleology 135	
	2 Pragmatism 137	
	3 Securing Objectiveness 139	
	(a) Equal Treatment of Indistinguishable Cases 139	
	(b) Rule of Law 141	
	(c) Collective Aspects of Individual Rights Protection 143	
	(i) Collectivism in Article 41 143	
	(ii) Article 8: Collective Aspects of Privacy 144	
	(iii) The Public Aspect of Free Speech Protection 145	
	4 Progressiveness 147	
	(a) Reliance upon Prior Case Law 147	
	(b) Analogous Matters Only 148	
	(i) Article 8 148	
	(ii) Article 10 149	
	(iii) Article 41 150	
	(c) Progressive Reasoning as Legitimating Factor 151(d) A Comment on the Dynamic Interpretation in Colas Est 152	
Б	•	152
L	Summary Observations	153
5	Lenient Standards of Review	155
A	Conflicting Interests and the 'Necessity' Criterion	157
	1 The Public-Private Tension: 'Necessity' and Proportionality 158	
	(a) 'Necessity' 159	
	(b) The Proportionality Assessment 160	
	2 The Supranational Dimension: the Margin of Appreciation Doctrine	161
	(a) The Margin of Appreciation Doctrine 161	
	(b) Its Role in the Assessment of 'Necessity' 162	
B	Introducing the Two Standards of Review	163
	1 Article 10(2): the markt intern Standard 164	
	(a) Introducing the Standard 164	
	(b) The Elements of Leniency 165	
	(c) The markt intern Approach Prevails 167	
	(i) The Currency of the Standard 167	
	(ii) Doubt as to Whether Statements are 'Commercial' 170	

	2 Article 8(2): the <i>Colas Est</i> Standard 172 (a) Introducing the Standard 172 (i) Elements of Strictness 172 (ii) Elements of Leniency: the <i>Niemietz</i> Implication 173 (b) The Standard's Content and Scope 174 (i) Is There a <i>Colas Est</i> Standard? 174 (ii) A Broader Margin of Appreciation 176	
C.	Leniency and the Court's Weighing of Competing Interests:	
	A Suggested Rationale	177
	1 An Approach in Need of Rationalization 177	
	 2 Lowering the Applicant's Convention Protection by Teleological Interpretation 180 (a) Emphasis upon the Object and Purpose of Convention Protection 180 (b) The Nearer the Provision's Core, the Narrower Is the Margin of Appreciation 181 (c) Does Disassociation with the Core Purpose Suggest a Wider Margin? 182 	
	3 Deference to Democratic Processes in the Economic Field 184	
	(a) Introducing the 'Complexity and Fluctuation'	
	Rationale under Article 10 185 (b) Democratic Legitimacy and the 'Necessity' Criterion 186	
	(c) The Special Status of Property Protection under the	
	Convention 188	
	(d) The Social Function of Property 189	
	(i) Protocol 1 Article 1 and Property Protection 190(ii) A Systematically Wide Margin in the Implementation	
	of Economic Policies 192	
D	Summary Observations	193
6	Retrospect and Prospect	197
	Retrospect	197
1 1	1 The Framework That Shapes the Court's Response 197	1)/
	2 The Court's Response 198 (a) The Court's Response Identified 199 (b) Justifying the Court's Response 200	
B	Questions of Wider Significance	202
	1 A Many-Sided Teleology 202	
	2 Economic and Collective Aspects of Civil and Political Rights 204	
_	3 A Liberal Project 205	
C	Whither Corporate ECHR Protection?	206
Bi	bliography	209
Index		229