

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

| | | |
|------|---|-----|
| § 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 | |
| | 191 |
| § 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 | |
| | 207 |
| § 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 |
| Epiloque | 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 |