

Review

Christoph Grabenwarter: The European Convention on Human Rights – A Commentary¹

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The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), is the most influential international treaty yet to have been concluded under the aegis of the Council of Europe. Since entering into force on 3 September 1953, this treaty has become the single most important guarantor of respect for and observance of human rights in Europe. Thanks to the mechanisms by which it is enforced and the practice of the institutions established in its wake, it has proved highly effective in the protection of human rights. The importance of the Convention is underscored by the fact that states wishing to become members of the Council of Europe must first sign the Convention and accept both the right of individual application and the jurisdiction of the European Court of Human Rights.² Based in Strasbourg, this Court guarantees that the human rights enshrined in the Convention are upheld. Procedures regarding infringements of human rights can be brought before the Court both by the signatory states of the Convention and by individual persons. Since the signatory states generally comply with the Court's judgements, a common regional human rights protection norm system has evolved. Accordingly, the Strasbourg Court is often called the 'constitutional court of Europe'.³

Although several English-language commentaries on this influential Convention already exist, a concise yet comprehensive handbook-style commentary was lacking until very recently. This gap has now been filled by Dr. Christoph Grabenwarter's *European Convention on Human Rights – Commentary*. Published in early 2014, its aim is to help those who work with the Convention to understand the workings of the ECHR and the Court's case law.⁴ Christoph Grabenwarter, university professor of Public Law, Business Law and International Law at the Vienna University of Economics and Business, and judge at the Austrian Constitutional Court, is also the author of a German-language textbook on the

¹ Christoph Grabenwarter, *European Convention on Human Rights – Commentary*, München 2014.

² Cf. Parliamentary Assembly of the Council of Europe, Resolution 1031 (1994) on the honouring of commitments entered into by member states when joining the Council of Europe, par. 9.

³ Conway W. Henderson, *Understanding International Law*, Chichester 2010, p. 308.

⁴ Cf. the preface of the commentary (Christoph Grabenwarter, *European Convention on Human Rights – Commentary*, München 2014, p. V).

ECHR⁵ which has become a key reference work for students and practitioners in German-speaking countries and elsewhere.

The reviewed commentary offers basic and at the same time in-depth information on the application of the Convention and on the case law of the Strasbourg Court. It is addressed at readers who seek thorough knowledge of human rights protection in Europe, i.e. practitioners and legal scholars. This sets it apart from other commentaries such as *Cases, Materials, and Commentary on the European Convention on Human Rights* by Alastair R. Mowbray.⁶ Mowbray's work is a textbook aimed also at students of law, and as such it covers not only the articles of the Convention but also more generally the creation of the Convention and the emergence of the Strasbourg Court. Christoph Grabenwarter's commentary assumes the reader's knowledge of these areas. The reviewed work also differs significantly from the well-known and widely popular ECHR commentary by Pieter van Dijk, which offers the reader even more exhaustive information.⁷ For undergraduate students seeking primarily to become acquainted with the ECHR, Christoph Grabenwarter's aforementioned textbook is recommended preferably.

Christoph Grabenwarter's ECHR commentary is notable for its subject matter, for the quality of its content and for its editing and writing style. It provides commentary on those articles of the Convention and its Protocols which lay down human rights (regarding the Convention: Art. 1-14 ECHR). These articles are cited in both English and French (the only two authentic versions of the Convention), which helps the reader to understand and interpret each given article. The annotations of individual articles include a bibliography related to that article and an overview of leading cases. After each case the author indicates the relevant aspect of the human right in question. This format allows for easy orientation in the case law, for example regarding the several aspects of the right to a fair trial (Art. 6 ECHR). The commentary illustrates not only the most eminent cases but also the latest case law. When discussing a judgment, the author generally focusses on those statements issued by the Court which help the reader to understand the essence of its decision. In particular, he omits the circumstances ('the state of affairs'), the argumentation put forward by the parties and the summary of the Court's decision. In taking these steps to condense the lengthy reasoning behind the Strasbourg Court's decisions in many cases, the author has done the reader a great service. The discussion of each human right begins with an introduction which provides the reader with a general picture of the article in question. This introduction includes the relevance of the right, the possibility of derogation from the right and the effect of the right on the Charter of Fundamental Rights of the European Union. Depending on the nature of the human right in question, the introductory section is generally followed by a discussion of the scope of protection, the interferences and finally the justification of infringements. In addition to the annotation of the articles of the Convention which lay down human rights, the commentary's appendix contains the full text of the ECHR in English, as amended by Protocols Nos. 11 and 14, including Protocols Nos. 1, 4, 6, 7, 12 and 13. The Rules of Court are also provided, as is the Annex to the Rules (concerning investigations) and Practice Directions. The information contained in the appendix and covering, among other things, written pleadings, just satisfaction claims, secured electronic filing and the request for anonymity makes this commentary an indispensable compendium for practitioners appearing before the Court.

Christoph Grabenwarter's ECHR commentary fulfils its aim, as it is described above. Its high-quality content, clear editing and perspicuous style are perfectly suited to the needs of the target readership. The

⁵ Christoph Grabenwarter & Katharina Pabel, *Europäische Menschenrechtskonvention*, 5th ed., München 2012.

⁶ Alastair R. Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3rd ed., Oxford 2012.

⁷ Pieter van Dijk & Fried van Hoof & Arjen van Rijn & Leo Zwaak (eds.), *Theory and Practice of the European Convention on Human Rights*, 4th ed., Antwerpen 2006.

commentary is a very accessible and user-friendly reference book for lawyers who need reliable information about the functioning of the ECHR and of the Strasbourg Court in a concise yet comprehensive form. To this extent, a commentary which offers effective support in such a challenging field as human rights protection in Strasbourg is now available.