European Convention for the Protection of Human Rights and Fundamental Freedoms

Commentary

von
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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 Right 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

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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