CONTENTS

Preface to the Seventh Edition	XIV		
A Note on Citation Conventions Table of Judgments and Decisions of the Court of Human Rights Table of Decisions and Reports of the Commission of Human Rights			
		Table of Treaties and Related Documents	lxiv
		Table of Cases	lxxi
Abbreviations	lxxiii		
PART 1 INSTITUTIONS AND PROCEDURES	1		
1 CONTEXT, BACKGROUND, AND INSTITUTIONS	3		
Context	3		
The Structure and Aims of the Council of Europe	4		
The Content of the European Convention	7		
The System of Protection	8		
The Role of the Secretary-General of the Council of Europe	10		
The Commissioner for Human Rights	12		
Other Human Rights Instruments of the Council of Europe	12		
Relationship with Other International Courts and Tribunals	12		
Concluding Remarks	16		
2 PROCEEDINGS BEFORE THE COURT	17		
Introduction	17		
Composition and General Procedure	18		
Procedure Prior to the Decision on Admissibility	21		
Examination of Admissibility: Procedural Issues	24		
Conditions of Admissibility	28		
Judgment	47		
Remedies Under Article 41	50		
Advisory Opinions of the European Court of Human Rights	52		
The Reform Process: Protocols 15 and 16 and Beyond	54		
Concluding Remarks	55		
Appendix	56		
3 SUPERVISING THE ENFORCEMENT OF JUDGMENTS	57		
Introduction	57		
Composition and Procedure of Committee of Ministers	58		
The Execution of Judgments	59		
Concluding Remarks	63		

viii Contents

4	INTERPRETING THE CONVENTION	64
	Introductory Remarks	64
	The Influence of the Vienna Convention	65
	The Principle of Evolutive Interpretation	76
	Approaches and Ideologies, and the Margin of Appreciation	81
	Concluding Remarks	83
5	THE SCOPE OF THE CONVENTION	84
	General Scope of the Convention	84
	Temporal Scope	86
	The Concept of Jurisdiction in Article 1 of the Convention	89
	Liability for Acts of International Organisations	101
	Other Issues Relating to Territorial Scope	106
	Concluding Remarks	107
6	RESERVATIONS AND DEROGATIONS	108
	Introduction	108
	Reservations	108
	Derogations in Emergency Situations	114
	Prohibition of Abuse of Rights	123
	Limitation on Use of Restrictions on Rights	127
7	ART 2 CONVENTION RIGHTS THE RIGHT TO AN EFFECTIVE REMEDY	133
/	Introduction	135
	What is an Arguable Complaint?	135
	The Nature of the Remedies Required	138 139
	Violations by Persons in an Official Capacity	148
	Concluding Remarks	149
	6	117
8	THE RIGHT TO LIFE	150
	Introduction	150
	The Death Penalty and the Extraterritorial Application of the Right to Life	151
	Prohibition of Intentional Killing by the State	153
	Death in Custody and Forced Disappearance	158
	The Positive Obligation to Protect Life	161
	The Duty to Investigate Suspicious Deaths	168
	Medical Termination of Pregnancy and the Rights of the Unborn Child	178
	Euthanasia and the Quality of Life	180
	Concluding Remarks	182
9	PROHIBITION OF ILL-TREATMENT	183
	Introduction	183
	Defining the Terms	185
	Obligations Concerning the Removal of Persons from the State	191
	Disappearances	197

:
1X
171

Use of Force by the State	199
Destruction of Homes and Possessions	199
Corporal Punishment	200
Protection from Gender-Based Violence	201
Acts in the Course of Arrest and Police Detention	202
Conditions of Detention	204
Positive Obligations	213
Evidential Issues	215
European Convention for the Prevention of Torture	216
Concluding Remarks	218
10 PROTECTION FROM SLAVERY AND FORCED LABOUR	219
Introduction	219
Slavery or Servitude	220
Human Trafficking	221
Positive Obligations	223
Forced or Compulsory Labour	224
Prison Labour	227
Military Service	229
Emergencies	231
Civic Obligations	231
Article 4 and Article 14	232
Consent	233
Concluding Remarks	234
11 PERSONAL LIBERTY AND SECURITY	236
Introduction	236
Structure of Article 5	236
What Amounts to a Deprivation of Liberty?	237
The Lawfulness of the Deprivation of Liberty	240
The Concept of Arbitrariness	240
Positive Obligations	242
Unacknowledged Detention	243
Permitted Pre-Trial Detention	244
	249
The Right to Release Pending Trial and Trial within a Reasonable Time	253
The Remaining Permitted Grounds of Detention Notification of the Reasons for Arrest or Detention	266
Testing the Legality of the Detention	267
An Enforceable Right to Compensation	271 272
Concluding Remarks	212
12 THE RIGHT TO A FAIR TRIAL IN CIVIL AND CRIMINAL CASES	274
Introduction	274
The Scope of Article 6(1)	275
Right of Access to Court	285
The Effectiveness of Court Proceedings	290
The Overall Requirements of a Fair Hearing	291
The Specific Requirements of Article 6(1)	297

		305 306 307
13	ASPECTS OF THE CRIMINAL PROCESS	309
	Introduction The Scope of Article 6(2) and (3) Fair Trial Guarantees in Criminal Cases Article 7: The Principle of Legality Protocol 7	309 309 310 328 337
14	LIMITATIONS COMMON TO ARTICLES 8 TO 11	340
	Introduction Express Limitations: Some General Points A Required Legal Basis for the Interference Specified Legitimate Aims The Limitation Must Be Necessary in a Democratic Society Concluding Remarks	340 341 343 347 359 368
15	PROTECTING FAMILY LIFE	369
	Introduction Defining Family Life Positive Obligations and Family Life A Right to Reproduce by Means of Assisted Reproduction	369 370 374
	and/or Surrogacy? Custody, Access, and Care Proceedings The Right to Adopt Inheritance Rights The Family Life of Non-Nationals The Family Life of Prisoners The Right to Marry and Found a Family Equality Between Spouses Concluding Remarks	374 376 383 386 386 392 395 398 399
16	PROTECTING PRIVATE LIFE, THE HOME, AND CORRESPONDENCE	400
	Introductory Remarks Definitions Positive Obligations and Private Life Freedom from Interference with Physical and Psychological Integrity The Collection, Storage, and Use of Personal Data Freedom to Develop One's Identity Immigration Issues and Private Life Health and Medical Procedures Protection of One's Living Environment Protection of the Home	400 400 404 405 418 422 435 437
	Protection of the Home Protection of Prisoners' Correspondence Concluding Remarks	450 451

CONTENTS	X
CONTENTS	Λ

17	FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION	456
	Introduction	456
	The Scope of Article 9	457
	Proselytism	461
	Religious Dress and Symbols	462
	Manifestation of Religion and Belief by Prisoners	466
	Conscientious Objection to Military Service	468
		470
	A Right Not to Manifest a Religion	47
	The Recognition and Authorisation of Religious Organisations	473
	Positive Obligations	480
	Concluding Remarks	482
18	FREEDOM OF EXPRESSION	483
	Introduction	483
	What Constitutes an Interference with Free Expression?	485
	Limitations on Freedom of Expression	486
	Hate Speech and Incitement to Violence	489
	Obscenity and Blasphemy	494
	The Press as the 'Watchdog' of Democracy	496
	Protest	503
	The Conflict with The Right to Private Life	503
	Legal Aid to Defend Defamation Proceedings	505
		506
	Whistle-Blowers	508
	Advertisements	510
		512
	Severity of any Penalty	514
	Positive Obligations	515
	Concluding Remarks	516
19	FREEDOM OF ASSEMBLY AND ASSOCIATION	517
	Introduction	517
	Positive Obligations	517
	Peaceful Protest	519
	Defining Associations	527
	Registration	529
	Political Parties	530
	Other Associations	535
	Trade Unions	537
	Restrictions on Particular Groups of Workers	544
	Concluding Remarks	545
20	PROTECTION OF PROPERTY	547
	Introduction	547
	Positive Obligations	549
	Defining Possessions	551
	Deprivation of Property	560

	Controlling the Use of Property	571
	Other Interferences with Peaceful Enjoyment of Possessions	575
	Concluding Remarks	577
21	THE RIGHT TO EDUCATION	578
	Introduction	578
	The Right to Education	579
	Regulating Education	583
	Safeguarding Pluralism in Education	586
	Education for Convicted Prisoners	594
	Concluding Remarks	595
22	THE RIGHT TO FREE ELECTIONS	596
	Introduction	596
	What is the Legislature?	598
	Electoral Systems	600
	The Right to Vote	603
	The Right to Stand for Election	607
	Concluding Remarks	613
23	FREEDOM OF MOVEMENT	614
	Introduction	614
	Movement and Residence	615
	The Prohibition of Expulsion of Nationals	623
	The Right of Entry to the Territory of the State of Nationality	624
	Prohibiting the Collective Expulsion of Aliens	624
	Expulsion Only to Follow Due Process	628
	Concluding Remarks	629
24	FREEDOM FROM DISCRIMINATION	631
	Introduction	631
	Positive Obligations	632
	Conceptual Issues	633
	The Court's Methodology	637
	Does the Complaint of Discrimination Fall Within the Scope	
	of a Protected Right?	641
	Is the Alleged Reason for the Discrimination One of the	
	Grounds Listed in Article 14?	642
	Class of Paysons Which is Treated More Faysons has	C11
	Class of Persons Which is Treated More Favourably?	644
	Is the Difference of Treatment Capable of Objective	616
	and Reasonable Justification? Discrimination and Minorities	646 655
	The Burden of Proof Under Article 14	658
	Protocol 12: A General Prohibition of Discrimination	659
	Concluding Remarks	661
	O	301

CONTENTS	xiii
PART 3 REFLECTIONS	663
25 RESULTS AND PROSPECTS	665
Introductory Remarks	665
Results	666
Prospects	670
Final Remarks	674
Index	677