Contents

C	onve	ntion for the Protection of Human Rights and	
		undamental Freedoms	xii
1		troduction	1
		Introduction	1
	1.2	Background to the European Convention on	
		Human Rights	1
	1.3	The European Court of Human Rights	3
	1.4	Principles of interpretation	4
		1.4.1 Positive obligations	5
		1.4.2 The Convention as a living instrument	6
		1.4.3 The principle of subsidiarity	6
		1.4.4 The margin of appreciation	7
	1.5	The use of international instruments	9
	1.6	Structure of the book	9
2.	Fre	edom from Violence and Exploitation	11
		Introduction	11
	2.2	Corporal punishment	12
		2.2.1 Judicial corporal punishment	12
		2.2.2 Corporal punishment in schools	13
		2.2.3 Corporal punishment in the home	16
	2.3	Protection of children from parental abuse	19
		2.3.1 The positive obligation to protect against harm	20
		2.3.2 Constructive knowledge and causation	21
		2.3.3 Investigation and prosecution	22
		2.3.4 The right to an effective remedy	24
		2.3.5 Conclusions on protection of children	21
		from parental abuse	25
	2.4	Protection from sexual violence	26
		2.4.1 The need for an adequate legal framework	26
		2.4.2 Consent	27
		2.4.3 Investigation and prosecution	30
		2.4.4 The involvement of children in proceedings	32
		2.4.5 Conclusions on sexual violence against children	35
		Child marriage	35
	2.6	Forced or compulsory labour, servitude, and slavery	38
		2.6.1 Military service	38
		2.6.2 Modern slavery	40
	2.7	Conclusion	44

viii CONTENTS

3.	The	Right to Respect for Private Life	46
		Introduction	46
	3.2	The right to privacy	46
		3.2.1 Intrusion by the media	47
		3.2.2 Intrusion by private individuals	50
		3.2.3 Intrusion by the state	52
		3.2.4 Conclusions on the right to privacy	53
		The right to receive information	53
		The right to identity	57
		3.4.1 Access to information on biological origins	57
		3.4.2 Legal recognition of biological parenthood	61
		3.4.3 Access to information on upbringing	62
		3.4.4 The right to a name	63
		3.4.5 Citizenship	65
	3.5	Conclusion	66
	7	U. T 43	68
4.	,	enile Justice	68
		Introduction	68
	4.2	Differences in treatment between adults and juveniles	70
		The age of criminal responsibility	73
	4.4	Deprivation of liberty	73
		4.4.1 Educational supervision	77
		4.4.2 Bringing a minor before a competent legal authority	78
		4.4.3 Detention on suspicion of having committed an offence	82
		4.4.4 The opportunity to challenge lawfulness of detention	83
		4.4.5 Conditions of detention	00
		4.4.6 Conclusions on deprivation of liberty in the context	87
		of juvenile justice	88
	4.5	The right to a fair trial	89
		4.5.1 Effective participation in proceedings	92
		4.5.2 The right to a public hearing	94
		4.5.3 The right to an independent and impartial tribunal	96
		4.5.4 Access to legal representation	101
		4.5.5 Conclusions on the right to a fair trial	102
	4.6	Sentencing	102
		4.6.1 The proportionality of sentencing	104
	4 1000	4.6.2 Parole and recall to prison	106
	4.7 Conclusion		
5	. Ch	ildren and the Immigration System	108
		Introduction	108
	5.2	'Family life' in immigration disputes	109
	5.3	Deportation and expulsion without a right to reside	111
		5.3.1 The obligation to grant a residence permit to a parent	112
		5.3.2 Constructive deportation	118
		5.3.3 Conclusions on deportation without a right to reside	120

			CONTENTS	12
	5.4	Expulsion following a criminal offence		120
		5.4.1 Expulsion of a parent following a criminal offence		120
		5.4.2 Expulsion following a criminal offence by a child		123
	5.5	Family reunification		127
		5.5.1 The obligation to allow 'essential' reunification		127
		5.5.2 Relevant factors for family reunification		130
		5.5.3 Conclusions on family reunification		136
	5.6	Children in immigration detention		137
		5.6.1 Unaccompanied minors		138
		5.6.2 Children detained with their parents		142
	5.7	Conclusion		145
6	Th	o Dight to Education		145
0		e Right to Education		146
		Introduction		146
	6.2	Form of education		147
		6.2.1 State versus private schooling		147
		6.2.2 Home schooling		149
	6.3	Specialised and segregated schooling		151
		6.3.1 Children with disabilities		151
		6.3.2 Ethnic minorities		153
		6.3.3 Migrant children		157
		6.3.4 Conclusions on specialised and segregated schooling		158
	6.4	Content of education		159
		6.4.1 Education in a chosen language		159
	J	6.4.2 Sexual education		161
		6.4.3 Religious education		164
		School uniform and dress		175
	6.6	Violence, abuse, and neglect		178
		6.6.1 Corporal punishment		178
		6.6.2 Sexual and physical abuse		180
		6.6.3 Responsibility for student death		182
		Exclusion from school		183
	6.8	Higher education		184
		6.8.1 Admission to higher education	1	184
		6.8.2 Expulsion from higher education	. 1	186
	6.9	Conclusion		187
7.	Soci	ial and Economic Rights	1	00
		Introduction		89
		The right to health		.89
	, ,_	7.2.1 Consent to medical procedures		.89
				.90
		7.2.2 Immunisation and disease prevention7.2.3 The right to privacy		94
		7.2.4 Medical negligence		.97
		Abortion		.98
				99
		7.3.1 Abortion and the rights of the unborn child7.3.2 Effective access to abortion		00
		Energy access to abortion	2	.03

X CONTENTS

The sight to a healthy environment	204
7.4 The right to a healthy environment	205
7.5 Property rights	206
7.5.1 Misuse of children's property	207
7.5.2 Inheritance	210
7.5.3 Child maintenance	212
7.5.4 Conclusions on property rights for children	212
7.6 Social security and social welfare	213
7.6.1 Parental leave and allowances	216
7.6.2 Access to state benefits	219
7.7 Conclusion	
8. Family Formation and Parenthood	220
8.1 Introduction	220
8.2 The definition of 'family life'	221
8.2.1 'Family life' between a mother and child	221
8.2.2 'Family life' between a father and child	222
8.2.3 'Family life' with extended family	232
8.2.3 Family life with extended family	233
8.2.4 When does 'family life' end?	235
8.3 Establishing parenthood	235
8.3.1 Mothers	236
8.3.2 Fathers	242
8.3.3 The rights of the child in establishing paternity	247
8.4 The changing face of the family	248
8.4.1 New family forms	251
8.4.2 New methods of reproduction	254
8.5 Conclusion	
9. Private Law Child Disputes	255
9.1 Introduction	255
9.2 Standing and representation	256
9.2.1 Standing of a parent	256
9.2.2 Standing of a third party	258
9.2.3 The need for separate legal representation	260
9.3 Parental control and authority	262
9.4 Custody and residence	264
9.4.1 Disputes between parents and third parties	264
9.4.2 Discriminatory treatment when awarding custody	266
9.4.2 Discriminatory treatment when awarding out of	272
9.5 Contact and access	273
9.5.1 Who benefits from the right of contact?	275
9.5.2 Discrimination when deciding contact	279
9.5.3 Enforcement of contact arrangements	283
9.6 Children's participation in private law cases	285
9.6.1 Direct versus indirect participation	28
9.6.2 Weight to be given to children's views	290
9.7 Parental child abduction	29
9.7.1 Should there be a full best interests enquiry?	29
9.7.2 Reasons for non-return	29
9.7.3 Effective enforcement	49

CON	TENTS	xi
0011	ILLIAIO	211

	9.8	Procedural rights	297
		9.8.1 Length of proceedings	298
		9.8.2 Public hearing and judgment	300
		9.8.3 Provision of legal assistance	301
	9.9	Conclusion	302
10.	Chi	ld Protection	304
	10.1	Introduction	304
	10.2	Child protection and the child's best interests	304
	10.3	Emergency measures	308
	10.4	The placement of the child in alternative care	310
		10.4.1 In accordance with the law	311
		10.4.2 Legitimate aim	312
		10.4.3 Necessary in a democratic society	313
		10.4.4 Conclusions on placement in alternative care	321
		Abuse in the care system	322
	10.6	Procedural rights	324
		10.6.1 Article 6	325
		10.6.2 Article 8	331
	10.7	Family reunification	337
		10.7.1 Contact with children in care	339
		10.7.2 The obligation to facilitate family reunification	343
		10.7.3 Challenging the return of the child to biological parents	346
	o .	10.7.4 Conclusions on family reunification	348
	10.8	The right to an effective remedy	348
	10.9	Conclusion	350
11.		ption	352
		Introduction	352
	11.2	Second-parent adoption	353
		11.2.1 Consent to second-parent adoption	353
		11.2.2 Prohibition of second-parent adoption by same-sex	
	113	partners Adoption without parental consent	355
	11.5	11.3.1 Positive obligations	357
		11.3.2 Adoption versus long-term foster care	357
		11.3.3 Procedural obligations	361
		11.3.4 The best interests of the child	363
		11.3.5 Recognising fathers in the adoption process	365
		11.3.6 Conclusions on adoption without consent	367
		Providing consent to adoption	369
	11.5	Respect for religious and philosophical convictions	370
	11.6	Intercountry adoption	373
		11.6.1 Recognition of foreign judgments	376 376
		11.6.2 The conversion of kafalah to adoption	377
		11.6.3 The enforcement of an adoption order	379
		1	011

xii CONTENTS

117	The involvement of children in adoption proceedings	381
	Selecting adoptive parents	382
	Post-adoption contact	388
	Revocation of adoption	389
	Conclusion	392
12. Conc	lusions	393
	The achievements of the Court in the field of	
1211	children's rights	393
12.2	The deficiencies of the Court as a child rights instrument	394
12.2	12.2.1 Substantive deficiencies	394
	12.2.2 Systemic difficulties	396
12.3	The future of children's rights before the Court	399
Dibliograph	441	401
Bibliography		407
Table of Cases		427
Table of International Instruments		
Index		