

CONTENTS

Acknowledgments	v
INTRODUCTION	1
Chapter 1. Introduction	3
1. Setting the stage.....	3
2. Research aim and questions.....	8
3. Delineation of the scope of the research	9
4. Research methods	11
5. Outline.....	14
PART I.	
INTRODUCTION TO THE CONVENTION SYSTEM	17
Chapter 2. Short History of the Convention System	19
1. Introduction	19
2. Intentions behind the Convention system.....	19
3. Legal obligations imposed by the Convention	23
4. The Convention and its enforcement mechanisms: from inter-State to individual applications	24
5. Conclusion	33
Chapter 3. Guiding Convention Principles	35
1. Introduction	35
2. Principle of effectiveness.....	35
3. Principle of subsidiarity	37
3.1. General background	37
3.2. Manifestations	40
3.2.1. No fourth-instance court doctrine.....	41
3.2.2. Margin of appreciation doctrine.....	44
3.2.3. Procedural review	48
3.2.4. Other manifestations	52
4. Conclusion	53

Chapter 4. Characteristics of ECtHR Proceedings	55
1. Introduction	55
2. Procedural rules and standards directly governing ECtHR proceedings	56
2.1. Who has standing before the ECtHR?	56
2.2. Procedural rules and standards	58
2.2.1. Hearings and access to documents	58
2.2.2. Third-party interventions	59
2.2.3. Reasons for judgments and decisions	60
3. Procedural standards indirectly governing ECtHR proceedings	60
3.1. Procedural standards set by the ECHR	61
3.1.1. Main components of Article 6 ECHR	61
3.1.1.1. Access to court	63
3.1.1.2. Right to be heard	64
3.1.1.3. Equality of arms and the right to adversarial proceedings	65
3.1.1.4. Reasoned judgment	65
3.1.2. Right to an effective remedy	66
3.2. Applying standards developed in the ECtHR case law to proceedings before the ECtHR	67
4. Conclusion	72
PART II.	
VERTICALISED CASES UNRAVELLED	73
Introduction	75
Chapter 5. Horizontal Positive Obligations	77
1. Introduction	77
2. Concept of positive obligations	78
2.1. Introduction to the concept of positive obligations	78
2.2. Defining positive obligations	79
2.2.1. Principle of effectiveness	80
2.2.2. Fair balance test	81
2.2.3. Reasonable knowledge and means test	83
2.3. Limits to the scope of positive obligations	84
3. Horizontal positive obligations: an overview	85
3.1. Protection against violence by private individuals	85
3.2. Protection of Convention rights in family relations	86
3.3. Positive obligations in relation to defamatory publications	87
3.4. Protection of one's surroundings	88
3.5. Protection of one's property	89
3.6. Protection of Convention rights in contractual relationships	90

3.7. Protection of Convention rights in employer-employee relations.....	90
4. Conclusion	91
Chapter 6. Detailed Analysis of Verticalised Cases before the ECtHR	93
1. Introduction	93
2. Origins of verticalised cases: underlying conflicts and involved parties	94
2.1. Cases related to one's surroundings	95
2.2. Right to reputation and private life versus freedom of expression cases.....	96
2.3. Family life cases.....	98
2.4. Employer-employee cases.....	99
2.5. Conclusion	100
3. The Court's examination of verticalised cases	100
3.1. Cases related to one's surroundings	101
3.2. Right to reputation and private life versus freedom of expression cases ...	104
3.3. Family life cases.....	110
3.4. Employer-employee cases.....	116
3.5. Conclusion	120
Conclusion	123
 PART III.	
PROBLEMS IN VERTICALISED CASES	125
Introduction.....	127
Chapter 7. Problems that may arise during the Court's Proceedings.....	129
1. Introduction	129
2. Private actors	129
2.1. Defending acts, interests and rights: an analysis of the four case studies... 130	130
2.1.1. Cases related to one's surroundings	130
2.1.2. Right to reputation and private life versus freedom of expression cases	130
2.1.3. Family life cases	131
2.1.4. Employer-employee cases.....	132
2.1.5. Concluding observations: consequences for procedural rights.... 133	133
2.2. Possible problems further explored	134
3. Convention States and the ECtHR	137
3.1. Convention States	137
3.2. The ECtHR	139
4. Conclusion	142

Chapter 8. Problems that may arise after the Court's Proceedings.....	143
1. Introduction	143
2. Effects of a judgment for the disappeared party.....	143
2.1. Article 46 ECHR and the nature of the Court's judgments	145
2.1.1. The indication of general or individual measures by the Court ...	145
2.1.2. Impact of the indication of specific measures on the disappeared party	150
2.2. Execution process: practice at the domestic level.....	151
2.2.1. Cases related to one's surroundings	153
2.2.2. Right to reputation and private life versus freedom of expression cases	153
2.2.3. Family life cases.....	154
2.2.4. Employer-employee cases.....	156
2.3. Conclusion	157
3. Implications of a judgment for Convention States and the Court itself.....	158
4. Conclusion	161
Conclusion	163
 PART IV.	
TOWARDS A NEW APPROACH TO VERTICALISED CASES.....	165
Introduction.....	167
Chapter 9. Current Third-party Intervention Procedure	169
1. Introduction	169
2. Procedural requirements	169
3. Different types of third-party intervention.....	173
3.1. Amicus curiae interventions	174
3.2. Actual third-party interventions	177
3.3. Conclusion	180
4. Influence of third-party interventions on the Court's judgments.....	181
5. Conclusion	184
Chapter 10.	
Proposal to Redesign the Third-party Intervention Procedure	187
1. Introduction	187
2. Scope of a right to third-party intervention for actual third parties.....	188
2.1. Personal scope	189
2.2. Procedural scope	192

3.	Additional Procedural Issues in Relation to a Right to Third-party Intervention	194
3.1.	Becoming aware of the Court's proceedings and the possibility of intervening	195
3.2.	Third-party submissions and the Court's reasoning.....	197
4.	Redesigned third-party intervention procedure in practice.....	199
4.1.	Right to reputation and private life versus freedom of expression cases ..	200
4.2.	Family life cases.....	201
4.3.	Employer-employee cases.....	202
	Conclusion	205
	CONCLUSION	207
	Chapter 11. Conclusion.....	209
1.	Introduction	209
2.	Characteristics of verticalised cases and the Court's approach to them.....	211
3.	Problems in verticalised cases	216
4.	Towards a new approach to verticalised cases	220
5.	Final remarks	223
	<i>Summary in Dutch.....</i>	<i>225</i>
1.	Inleiding	225
2.	De aard van geverticaliseerde zaken en de aanpak van het EHRM	227
3.	Problemen in geverticaliseerde zaken	233
4.	Naar een nieuwe aanpak van geverticaliseerde zaken.....	236
5.	Afsluiting.....	239
	<i>Bibliography</i>	<i>241</i>
	<i>Appendix I: Overview case law sample</i>	<i>253</i>
	<i>Curriculum Vitae</i>	<i>257</i>