

BOOK REVIEW

EUROPEAN CONVENTION ON HUMAN RIGHTS. By C. Ovey and R. White [Oxford, OUP, 2002. Hardback (with appendix and index) 506 pp].

This well written and presented work is, as the title makes clear, a book about the European Convention on Human Rights (ECHR). The publication of this third edition is very timely as it takes into account all the changes which have taken place since the second edition in 1996; namely the revised restructuring of the ECHR machinery as a result of Protocol No.11, merging the part-time European Commission of Human Rights (the Commission) and the European Court of Human Rights (the Court) into a new permanent Court and the joining of Central Eastern and European countries to the ECHR. With the enactment of the Human Rights Act 1998, incorporating the ECHR into UK domestic law on the 2 October 2000, for the first time there is a code of legally enforceable human rights in UK law and concomitantly there is now a strong focus on the ECHR. However, the principal aim of the authors, as declared in the preface is not to provide an account of the implementation of the ECHR in a particular State, but an analysis of both the procedure and the substance of the Strasbourg undertaking, its underlying principles and its supervisory machinery. This is achieved by adhering to the canonical and traditional manner adopted by previous editions, an article by article analysis of the ECHR itself.

The first chapter provides the historical background to the ECHR, beginning with the formation of the Council of Europe in 1949 and the drafting and signing of the ECHR in 1950 by its Members States. The ECHR deals with the protection of rights which are for the most part civil and political rights. Thus to take a few examples at random, the right to life, liberty and security; freedom from inhuman or degrading treatment; freedom from slavery, servitude and forced labour; the right to a fair trial; freedom of conscience, of speech and of assembly. These and other rights contained within the ECHR can be split into two categories: unqualified and qualified rights. Unqualified rights are described by the authors as the right to life, subject to the exceptions listed in Article 2; the prohibition of torture, inhuman and degrading treatment in Article 3; the prohibition of slavery and forced labour in Article 4; the right to liberty and security in Article 5; the right to a fair trial in Article 6; the prohibition on punishment without law in Article 7; the right to marry in Article 12; the right to an effective remedy in Article 13; the prohibition of discrimination in Article 14; the right to education and the right to free elections in Protocol 1; and the prohibition of the death penalty (except in time of war or an emergency) in Protocol 6. Some of these rights (Articles 2, 3, 4, and 7 and Article 4 of Protocol 7) are absolute in that they cannot be derogated from. The second group, "qualified rights", refers to those rights where a balance has to be struck between the rights of the individual on the one hand and the rights of the public on the other. These are Articles 8, 9, 10 and 11 (right to privacy, freedom of thought, conscience and religion, freedom of expression and association respectively).

The remainder of chapter 1 deals with the institutions of the ECHR, namely the Commission and the Court. The former is referred to in the book as the “old” system of protection as it was abolished in November 1998 and the latter the “new” system of protection as a result of the amendments of Protocol No. 11. Though the focus of the book is on the “new” system, reference is also made to the “old” system of protection as the decisions of the Commission continue to have an influence on the development of the ECHR. The next two chapters concentrate on the scope of the ECHR and highlight some of the key concepts and underlying principles, such as the positive and negative obligations, principle of effectiveness, the doctrine of proportionality and the margin of appreciation.

These and other emerging themes are masterly explained and developed in the following chapters as they deal with the substantive rights of the ECHR. Some of the substantive rights attract longer coverage than others, for example Article 6 is divided into two chapters. Chapter 8 provides an overview of some of the important and interesting aspects of the right to a fair trial, such as the nature of criminal charges and civil rights and obligations, and focuses on some of the specific features which have emerged from the case law as essential ingredients of a fair trial. Chapter 9 focuses on particular issues relating to the fairness of criminal trials in addition in dealing with Article 7. Chapter 11, dealing with the right to privacy, is also very lengthy, reflecting the very broad range of circumstances covered by Article 8. The substantial body of case law under this Article and also Article 3 shows the operation of the ECHR as a “living instrument” able to respond to the changing and developing attitudes and values of the Contracting States. Throughout these chapters, the authors adopt a similar and straightforward, yet effective approach: an articulation of the Convention right followed by reference to case law to help define and clarify the content and the scope of the rights protected and concluding with a very helpful summary. This is no dry narrative, as the authors are not chary to criticise the Court’s approach to illuminate inconsistencies in their judgments; for example the State’s positive obligations, where a deprivation of liberty is effected by a private person, is unclear and unsatisfactory. The authors opine that in this field and others (Article 8) there is scope for improvement to develop and protect the rights afforded by the ECHR.

Before the concluding chapter, chapters 24 and 25 provide factual information explaining the procedural aspects of bringing a case to Strasbourg (taking account of the changes contained in Protocol No. 11) and the role of the Committee of Ministers in supervising the execution of the Court’s judgments. The book concludes with a summary of the main achievements of the ECHR and the prospects that lie ahead. Though the Convention has established a formal system of legal protection available to individuals covering a range of civil and political rights, it is now over 50 years old. As the content of the ECHR and the Protocols reflect the agenda of civil and political rights in the 1950s, the authors opine and conclude that there is a need to extend the catalogue of rights to include stronger protection for other rights such as socio-economic rights and women’s rights, where the ECHR is very weak or does not even touch upon.

All in all, the text offers a highly readable yet scholarly analysis of both the procedure and the substance of the ECHR. Completely up to date and replete with immensely detailed and useful footnotes, this revised edition

provides an in-depth understanding of an increasingly important area of law suitable for both students and practitioners or those interested in understanding the work of the ECHR.

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