

BUCHBESPRECHUNGEN

Jochen Abr. Frowein/Wolfgang Peukert

Europäische MenschenRechtsKonvention. EMRK-Kommentar

(European Convention on Human Rights-Commentary), Kehl, Strasbourg, Arlington, 1985, DM 188,—

It has been 20 years since *Schorn* presented a commentary on the ECHR, followed by *Guradze* in 1968. Since no new editions of these German commentaries were forthcoming, by the end of the 70ies the gap in the German language literature on the Convention increasingly widened. While another full-scale, multi-author commentary is still in the process of germination (*Miehsler/Petzold* et al.), *Frowein/Peukert's* Convention Commentary comes at the right time. It enormously facilitates quick orientation on all practice problems, particularly as regards the three Strasbourg institutions. The expertise of the two authors, *Frowein* as Vice-President of the Commission and *Peukert* as member of the Commission Secretariat, and their intimate acquaintance with the Convention practice is evident throughout the commentary: each Article is presented in a lucidly written, clear and problem-oriented manner, and both authors do not only present the spectrum of opinions ranging around particular problems but also make candid and often critical comments. A purely academic approach might have meant being satisfied with the problem presentation and purely relating the Convention organs' actual decisions. Many other ECHR-commentaries follow precisely that line. But while undoubtedly bolstering up the role of the Convention organs, such presentation often tends to belittle the controversies of matter and substance. The critical approach chosen by *Frowein/Peukert*, instead, is refreshing and stimulating, and in my view, in fact, does far more to enhance respect for the Strasbourg institutions.

By and large, the Commentary follows an article-by-article exposition, which the user will find most helpful. That rule is only broken when it comes to comment upon procedural provisions (Arts. 20–23, and sections III–V ECHR), and upon Arts. 8–11 ECHR. This is an obvious mode of presentation, as those four articles have common limitation clauses.

To illustrate the technique of presentation two randomly chosen examples may suffice: *Frowein's* treatment of reservations (Art. 64 ECHR) rightly is critical. The notion that individual Member States can rule out the application of particular Convention provisions *in toto* would seem to be a drawback in a human rights scheme where minimum guarantees are sought to be laid down. As *P.-H. Imbert* in his treatise on reservations to multilateral treaties in 1979 and in subsequent articles has shown, a careful balance needs to be struck between the object of binding as many States as possible – implying a flexible adherence scheme – and of securing the common core of the Convention scheme

– implying rigid reservation rules for essential provisions, as the Vienna Treaties Convention of 1969 has in mind. *Frowein* rightly argues for a restrictive interpretation of reservations and favours an approach which limits such reservations by ultimately subjecting them to the test of abuse of right. Naturally, a country-by-country analysis that follows puts the emphasis differently, depending on how the Convention scheme operates in the particular Member State concerned. *Peukert*, in his comprehensive treatment of one of the most debated articles, namely Art. 1 of the First Protocol to the Convention, highlights the problems surrounding the guarantee and limitations of property and expropriation in the Convention scheme. All major decisions are fully reviewed, and the most recent authoritative decisions of the Court in the cases of *James* and *Lithgow* in 1986 are judiciously and carefully anticipated.

The book is prefaced by a useful introduction on the travaux préparatoires, and contains a ratification chart, text of reservations, statistics on the case load of the Convention institutions, the full text of the ECHR and Protocols thereto, plus the relevant Rules of Procedure of all Convention organs. A useful register is appended at the end. Moreover, the Commentary presents an up-to-date, select bibliography that takes account of all major books and articles on the Convention scheme. With hundreds of articles on the ECHR by now, careful selection was an obvious must, and the authors in my view picked out the most relevant. Nevertheless, the Commentary as a whole is a practice commentary, and this means that literature citation in the text is somewhat limited. Instead, the rich case law is commented upon fully and critically. And as potential users need this information most, it was wise to concentrate on a systematic appraisal of the case law in the first edition. As a *desideratum* for future editions, each article comment ought to be preceded by a list of major articles, as was done by *Guradze*. And a minute point: Since the addressees of the Commentary in German-speaking countries will mostly be practitioners, apart from researchers that have easier access to the literature and case law, it is suggested that Commission, Court and Committee of Ministers' decisions be cited with the year of decision in brackets, or alternatively that a table of cases is added, along the lines which the editors have employed in their journal »Europäische Grundrechte-Zeitschrift« in 1986, at pp. 518 et seq. The official mode of citation may be somewhat demanding for the uninitiated. But these are not criticism but simply suggestions.

In sum, this new commentary on the practice of the European Convention on Human Rights fills a huge gap in the German language literature and will be quite indispensable for anyone dealing with actual human rights problems in Europe. Moreover, it greatly facilitates dissemination of knowledge about the working of an institutional set-up which is gathering momentum throughout Europe and particularly in German-speaking countries. No doubt the commentary will find its way to the shelves of law courts, practitioners and academics alike. Both authors deserve high praise for this very skilfully and systematically presented, well edited and unusually readable book.

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