

Book Review – Anne Peters, Einführung in die Europäische Menschenrechtskonvention (Introduction to the European Convention for Human Rights)

Anne Peters, Einführung in die Europäische Menschenrechtskonvention, JuS-Schriftenreihe, Vol. 161, C.H. Beck, Munich 2003, 281 pages, € 21, 80, ISBN 3-406-50362-4

By Robert Esser

A couple of years ago there was only a handful of books on the European Convention on Human Rights. Since then quite a few textbooks and monographs have been published that portray the Convention as a subject of international public law in general as well as an important element of the criminal law systems in Europe.¹ Among these books, which cover the influence of human rights on the national systems of law, is Peters' book, published in the publication series *Juristische Schulung – JuS*, a well-known German law magazine. The audience the author is targeting with this book is primarily students and practitioners who have not been working with the Convention thus far and want to gain an overview of the basic rights ensured and interpreted by the European Court of Human Rights in Strasbourg. One may certainly say that the European Convention on Human Rights has become a key research subject also in the field of criminal procedure law in recent years. However, the author goes far beyond the Convention's criminal standards and draws the reader's attention to several private and public law subjects that have also been tremendously influenced by Strasbourg standards, such as children under guardianship and protection of minors (p. 47, 163), commercial advertising (p. 61), public service and freedom of speech (p. 65), broadcasting of radio and TV programs (p. 77), sexual orientation and the right to respect for private life (p. 157), freedom of religion (p. 181), protection of property rights (p. 193) and protection of the environment (p. 201).

¹ Grabenwarter, *Europäische Menschenrechtskonvention "European Convention on Human Rights"* (2003); Esser, *Auf dem Weg zu Einem Europäischen Strafverfahrensrecht "Towards a European Criminal Procedure Law"* (2002); Haefliger & Schürmann, *Die Europäische Menschenrechtskonvention und die Schweiz "The European Convention and its Impact on Switzerland"* (2d ed. 1999); Villiger, *Handbuch zur Europäischen Menschenrechtskonvention "Handbook of the European Convention on Human Rights"* (2d ed. 1999); Reid, *A Practitioner's Guide to the ECHR* (1998).

The first part of the book introduces the Convention's fundamental system by covering key topics such as the structure and general bars of different rights and guarantees as well as the guidelines and argumentation of the ECHR's judgments. At this point the book also provides a brief overview of the implementation of the Convention in the member states of the Council of Europe. Another important aspect Peters focuses on before getting to the heart of the guarantees ensured by the Convention is the development of basic and human right standards in the jurisprudence of the European Court of Justice in Luxemburg. Peters portrays the relationship of the EU-organs and institutions with the Convention correctly, although any hint to Art. 6 para. 2 of the EU-Treaty is missing.

In the main part of her book Peters tries to build up different legal topics out of the rights of the Convention (p. 36 - 231). Concerning the manner of presentation, I appreciate that the author does not adhere strictly to the sequence of rights as laid down in the text of the Convention. The book is broken into six parts, which progress from the basic protection of life and limb to more advanced topics such as communicative and political basic rights, rights concerning judicial procedure, protection of personal life, economy and environment, and demand for equality. Within these topics Peters undertakes a detailed classification of various individual rights, which leads to an impressive overall picture of all circumstances governed by the Convention. Leading cases of the ECHR - such as the *Soering* and *Öcalan* judgments concerning extradition (p. 51, 53) or the *Pretty* judgment on medically assisted suicide (p. 40) - are given special attention, which increases the perceivability of the chosen topic.

Despite their ideal and numeral importance within the Strasbourg case law, Article 5 and Article 6 of the Convention are discussed too briefly. Furthermore, there should have been more references to leading ECHR judgments in that special field of law. For example, in the chapter dealing with anonymous witnesses a hint to the *Doorson* judgment would have been advisable. Due to the author's abbreviated presentation, the line of argumentation of many judgments is lacking precision. That applies especially to the right to assistance of an interpreter (Art. 6 para. 3 lit. e; p. 139), which in contrast to *Peters* is also guaranteed to an accused assisted by defense counsel, and to the right of access to defense counsel which has not been developed by the ECHR so *generally* as alleged by the author (p. 136, fn. 495). However, the author's references to literature on human rights allow a deeper engagement with special questions in this field of law.

It is striking that the book does not concentrate on an academic overview of the provisions of the Convention, but enables the reader to work with the Convention and its rights, especially by appending several examination schemes (for example, a three-steps-guideline how to examine the rights of the Convention, extent of protec-

tion, interference, and justification of the interference). The allusions to German constitutional law are very useful as they allow a comparison of the standards set by the Convention to the scope of protection under national constitutional law. They also make it clear to the reader that the rank the Convention enjoys in the national hierarchy of law (in Germany the Convention has been ratified as an Act of federal law) is rather problematic.

The last chapter covers the Strasbourg judicial control system's main structures, including a very brief look at the effects of ECHR judgments on national law. The author provides a short practical guideline of the individual complaint (Article 34 of the Convention), which is dominating the work of the court (p. 233 – 256). Following the overall pattern of the book, the procedure is not explained in an abstract manner but illustrated by significant decisions of the ECHR, making the whole presentation more vivid.

The case law digest at the end of the book takes into account that the jurisdiction of the ECHR is classical case-law, which means a body of law developing on a case-by-case basis. It enables the reader to find ECHR decisions quickly. Moreover, the author has added an example of a written examination for students dealing with a subject ruled by the Convention, which makes it clear how difficult the relationship between the duty of the state to act in favor of its citizens and the ban for the state to interfere with personal rights is in practice. The same applies to the conditions under which the acting of a private person is regarded as a state's action.

In coming years the European Convention on Human Rights will deeply influence academic case work in the field of criminal procedure law as well as cases whose focus is on private and public law issues. After reading this book, my view is that it contains enough information to be called an introduction to the rights guaranteed in the Convention and the working method of the ECHR. However, according to its title, the book does not aim to substitute a commentary on the Convention, or to provide the reader with a complete overview of the Strasbourg jurisdiction. Nevertheless, it bridges a gap that has existed for a long time on the judicial literature market, and can be recommended as a guide to the structures and basic rights ensured in the Convention and elaborated by the jurisdiction of the ECHR.