## Contents

1	The Basics of the Convention System	1
	1.1 Introduction	1
	1.2 Main Principles Underlying the Convention: Effectiveness and	
	Subsidiarity	3
	1.3 The Double Role of the European Court of Human Rights	9
	1.4 The Structure of Convention Rights Review	11
	1.5 Typology of Convention Rights from a Perspective of	
	Possibilities for Justification	19
2	The Court's Overall Argumentative Approach – Mediating	
	Between the Abstract and the Concrete	31
	2.1 Introduction	31
	2.2 Object of Review: Legislation and/or Individual Decisions	32
	2.3 Individual Redress or General Convention Interpretation?	36
	2.4 The Role of Precedent in the Court's Case Law	37
	2.5 Case-based Review, Incrementalism and the Search for a	
	Reflective Equilibrium	41
	2.6 Legal Effect of the Court's Interpretations; 'Res Interpretata'	44
3	Principles Governing the Interpretation and Application	
	of Convention Rights	46
	3.1 Introduction	46
	3.2 The ECHR and the Vienna Convention on the Law of Treaties	47
	3.3 Evolutive Interpretation and the Convention as a	
	'Living Instrument'	51
	3.4 Meta-teleological Interpretation and the Underlying Values	
	of the Convention	59
	3.5 Autonomous Interpretation	67
4	Methods of Convention Interpretation	78
	4.1 Introduction	78
	4.2 Textual Interpretation	79
	4.3 Interpretation in light of the Travaux Préparatoires	83
	4.4 Internally Harmonising Interpretation	87
	4.5 Common Ground or Consensus Interpretation	93

5	Positive and Negative Obligations 5.1 Introduction	108 108
	5.2 Definition of Positive Obligations	110
	5.3 Types of Positive Obligations	121
	5.4 The Relation Between Negative and Positive Obligations	132
6	Vertical and Horizontal Effect	136
	6.1 Introduction	136
	6.2 Direct Responsibility of the State for Interferences with	
	Convention Rights	138
	6.3 Indirect Horizontal Effect	144
7	The Margin of Appreciation Doctrine	160
	7.1 Introduction	160
	7.2 The Development, Function and Effects of the Margin of	
	Appreciation Doctrine	163
	7.3 Applicability of the Margin of Appreciation Doctrine	168
	7.4 Determining the Scope of the Margin of Appreciation	172
	7.5 Continued Relevance of the Margin of Appreciation Doctrine?	196
8	Justification of Restrictions I – Lawfulness	198
	8.1 Introduction	198
	8.2 Autonomous and Substantive Interpretation	199
	8.3 A Basis in Domestic Law	200
	8.4 Accessibility	203
	8.5 Foreseeability	205
	8.6 Absence of Arbitrariness	212
	8.7 Procedural Safeguards	214
9	Justification of Restrictions II – Legitimate Aim	220
	9.1 Exhaustive Lists of Legitimate Aims and Their Importance	220
	9.2 Application and Interpretation of the Legitimate Aim Requirement	221
	9.3 Discrepancy Between Stated and Real Aims	225
	9.4 Plurality of Aims	226
	9.5 Interconnectedness of Legitimate Aim and Proportionality	227

10	Justification of Restrictions III – Necessity, Proportionality and	
	Fair Balance	229
	10.1 Formulas, Tests and Standards	229
	10.2 Necessity, a Pressing Social Need and the Least Restrictive	
	Means Test	233
	10.3 The Relevant and Sufficient Test	239
	10.4 Fair Balance, Proportionality and Related Tests	242
	10.5 Procedural Review	258

Index

261