

Table of Cases and International Instruments	p. xiii
List of Abbreviations	p. xxiii
Introduction	p. 1
Background of the Research	p. 1
The upsurge of the rule of law debate	p. 1
The rule of law as a standard for the international legal system	p. 3
An international rule of law standard directed at states	p. 6
Focus of the Research	p. 9
The European Convention on Human Rights	p. 9
The rule of law as a value underlying the Convention	p. 11
Outline and Methodology	p. 15
The Rule of Law Concept	p. 18
Introduction	p. 18
Approaches to the Rule of Law Concept	p. 19
Elements of the rule of law	p. 19
Aims of the rule of law	p. 21
National forms of the rule of law	p. 24
Analysis	p. 35
Legality: The Central Element of the Rule of Law Concept	p. 37
Different forms of legality	p. 37
Quality requirements of legality	p. 38
Judicial safeguards as requirements of legality	p. 42
Legality setting limits to governmental power	p. 44
Legality and the substantive aims of law	p. 45
Separation of Powers, Judicial Safeguards, and the Rule of Law	p. 49
The separation of powers doctrine	p. 49
Safeguards by an independent judiciary	p. 51
The Relation between Human Rights and the Rule of Law	p. 54
Procedural human rights	p. 55
Human rights and limited government	p. 57
Human rights and the substantive contents of law	p. 60
The Relation between Democracy and the Rule of Law	p. 62
Democracy defined as majority rule	p. 62
Democracy defined as the self-rule of the people	p. 64
Conclusion	p. 67
The Legality Concept in the Case Law	p. 70
Introduction	p. 70
The Role and Function of Legality in the Case Law	p. 71
The Convention articles referring to legality	p. 71
The term legality	p. 73
The importance of legality for the protection of Convention rights	p. 74

The requirements of legality derived from the rule of law	p. 76
The Existence of a National Law	p. 79
The fourth instance doctrine	p. 80
The material view on domestic law	p. 83
Analysis	p. 85
The Quality Requirements set to National Law	p. 86
Accessibility	p. 87
Foreseeability	p. 88
Judicial safeguards as a requirement of legality	p. 101
Non-retroactivity in criminal cases	p. 105
Quality requirements of legality concerning the right to liberty	p. 110
A limited role of generality in reviewing the quality of the law	p. 112
Analysis	p. 113
Differentiating Legality from Proportionality	p. 117
Conclusion	p. 121
Judicial Safeguards	p. 124
Introduction	p. 124
The Right to a Fair Trial	p. 125
The detailed guarantees of the right to a fair trial	p. 125
Access to court derived from the rule of law	p. 128
The scope of the right of access to court	p. 130
Limitations of the right of access to court	p. 137
The authority of judicial decisions	p. 146
Analysis	p. 150
Judicial Safeguards beyond the Right to a Fair Trial	p. 153
The authority of the judiciary	p. 153
Judicial safeguards protecting the right to liberty	p. 154
The right to an effective remedy	p. 155
Analysis	p. 158
Separation of Powers and Independent Judiciary in the Case Law	p. 159
The growing importance of the separation of powers doctrine	p. 159
A general standard of independence	p. 162
Independence and impartiality	p. 164
A tribunal established by law	p. 167
Analysis	p. 168
Conclusion	p. 170
The Substantive Contents of Law	p. 173
Introduction	p. 173
Procedural Convention rights	p. 174
The Rule of Law and Individual Freedom	p. 178
The changing focus of the Convention	p. 178

The rule of law most relevant to protect individual freedom	p. 180
The rule of law and positive obligations	p. 181
The Rule of Law and the Substantive Contents of Law	p. 185
Legality and a hierarchy of norms	p. 185
The Convention as a constitutional instrument	p. 186
Conclusion	p. 191
Democracy	p. 193
Introduction	p. 193
Defining Democracy	p. 193
Democracy based on pluralism and participation	p. 193
The only political model compatible with the Convention	p. 196
The importance of judicial safeguards to democracy	p. 198
Analysis	p. 200
The Rule of Law Requiring Democracy	p. 200
The democratic heritage of norms	p. 201
Democracy governed by the rule of law	p. 206
Conclusion	p. 208
Conclusion	p. 210
Bibliography	p. 219
Index	p. 233

Table of Contents provided by Blackwell's Book Services and R.R. Bowker. Used with permission.