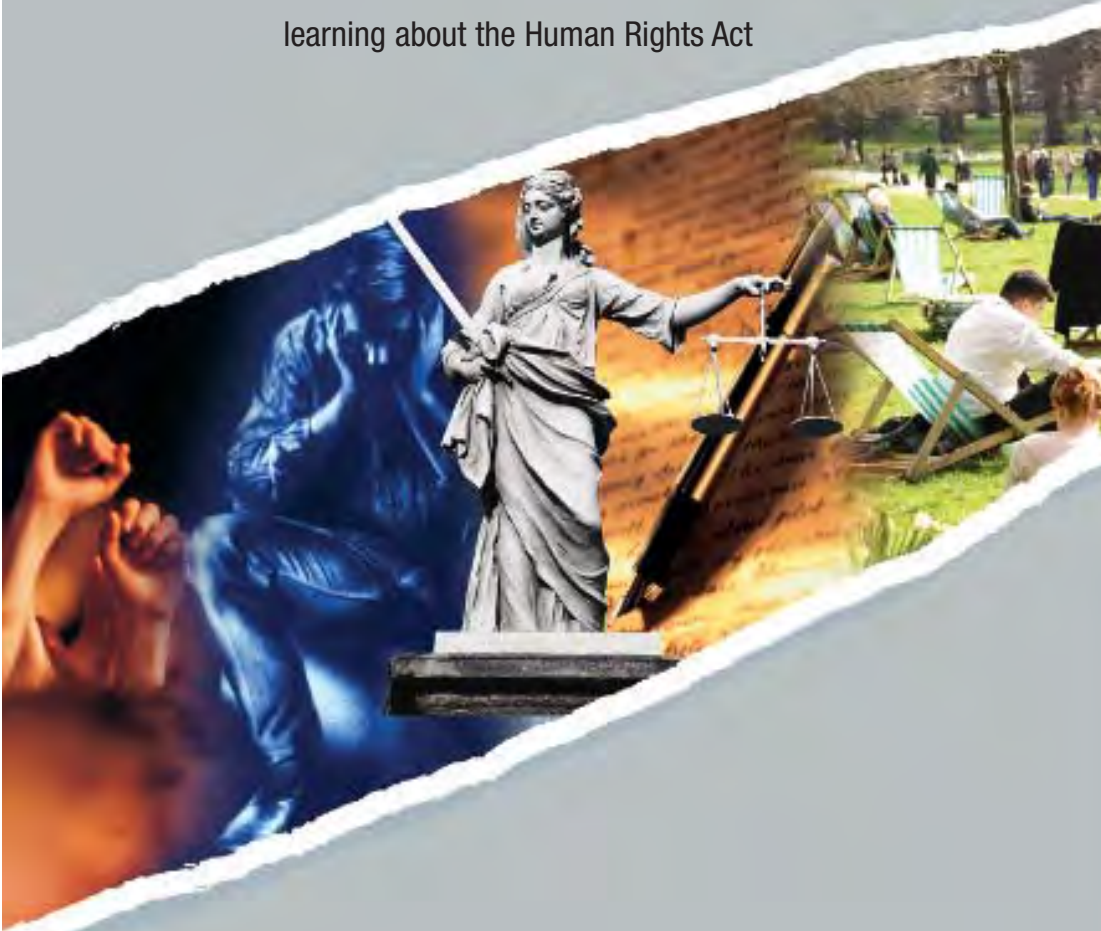


get in on the **act**

learning about the Human Rights Act



Office of the
**First Minister and
Deputy First Minister**

www.ofmdfmi.gov.uk

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02



Foreword

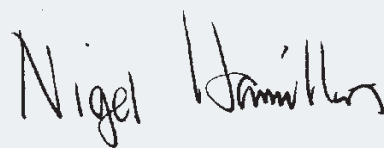
I am delighted to introduce you to this new updated guide to human rights for public authorities in Northern Ireland. It is now just over five years since the Human Rights Act was introduced into domestic law. The Human Rights Act ensured that the rights in the European Convention on Human Rights became part of our law in Northern Ireland. In the interim there have been many changes to law and policy making to ensure that the Convention rights of citizens are protected and respected.

Much progress has been made, but, we cannot be complacent. We need to ensure that, as public servants, our daily actions are driven by an ethos that promotes, protects and respects the rights and freedoms of our service users. This ethos is consistent with the Reform agenda.

All state bodies including government departments, district councils, courts, police, schools and hospitals as well as non public sector bodies carrying out public functions must act in accordance with the Convention rights and freedoms when making legislation and policy and in all their day to day decisions.

I trust you will find this guide a practical help in your day to day work. It is by your actions that we will create a culture of rights, respect and responsibilities across public authorities in Northern Ireland. The Convention rights are the basic values on which the vision of a just, equal and inclusive Northern Ireland are based. Your actions therefore can influence the delivery of our vision and strengthen the rights of your fellow citizens.

I would urge you to explore this guide thoroughly because it will give you the tools to be able to contribute to this aim.



Nigel Hamilton
Head of NICS



04



How to use this guide

This guide is divided into three parts.

Part 1 is the introductory and background section. You will need to read this first because it lays out the foundation for understanding and getting the most out of the guide. It explains many principles and terms which you will need to know to fully appreciate the detail in part 2.

Part 2 sets out the Articles of the European Convention on Human Rights (and its Protocols) which have been made part of our law by the Human Rights Act. They are contained in a series of two page spreads which illustrate the main points in each Article while offering you an opportunity to interact with the material. There is a series of short stories and questions connected to the rights and freedoms for you to consider. You should find that thinking through these situations is an enjoyable and challenging exercise. The stories have been created from actual cases brought before the European Court of Human Rights and a list of the cases used can be found at page 65. The centre pages contain the full text of the Articles and Protocols as set out in the Human Rights Act, and can be detached for easy reference and used as a poster.

Part 3 contains a series of supporting documentation including a Human Rights Impact Assessment proforma, some frequently asked questions (FAQs), useful contacts and a glossary.

Should you have any difficulty in using this guide, or have any further questions relating to it please contact The Equality and Human Rights Unit, OFMDFM, Tel: 028 9052 3144.

This document is also available on our website www.ofmdfmi.gov.uk/human-rights

If this document is not in a format which meets your requirement, please contact us.

part one

introduction
and background

Part 1

A. Background and Detail

What are human rights?

Human rights are those rights and freedoms to live, to act and to think which we should all have, and which no-one should be able to arbitrarily interfere with.

What is the European Convention on Human Rights?

In Europe there is a list of civil and political rights and freedoms which everyone should have. This list is in the European Convention on Human Rights (the Convention). The Convention was drafted in the aftermath of World War II by the Council of Europe, which came together to try to bring stability to a war torn Europe horrified by its experiences. The Convention is a “never again” pact between states and is a promise from states to those who are within their jurisdiction that their rights will be respected. As such, the rights which the Convention focuses on are those which had been most abused throughout the war. However, the Convention is not just a declaration of rights; it is a practical legal instrument, with state compliance being supervised by the European Court of Human Rights (the European Court) in Strasbourg. Any person who feels that their rights have been breached by a state which has ratified the Convention should first try to take their case before the national authorities of the

state. If they are unhappy with the result they can then take their case to the European Court.

B. The Human Rights Act

What is the Human Rights Act?

The Human Rights Act 1998 (HRA) came into force on 2 October 2000. Before this, people in the United Kingdom (UK) could not rely on their Convention rights in cases heard before courts in this country, and had to go directly to the European Court to enforce their rights. This changed with the introduction of the HRA, which made the Convention part of UK domestic law. When introducing legislation to Parliament, Ministers must make a declaration stating whether or not, in their opinion, the legislation is compatible with the rights guaranteed under the HRA.

What does the Human Rights Act do?

The HRA gives judges in the UK the power to examine the actions of public authorities to determine if they are acting in a way which breaches the Convention. It also requires public authorities to act in a way which is compatible with Convention rights.

Who are considered public authorities?

Public authorities include courts and tribunals as well as Northern Ireland Civil Service departments, their Non-Departmental Public Bodies (NDPBs) and Agencies and any person who performs functions which are of a

public nature. This will be dealt with further in the section on Procurement and Contracting Out Services.

Who can take a case?

Anyone whose rights have been **directly affected** can potentially bring a case. However there are a number of factors which have to be taken into account, for example whether the rights were breached by a public authority or someone carrying out a public function, and whether a case is taken within the prescribed time limits. If someone thinks that they are a victim, in other words that their rights under the Act have been denied or breached, they should seek legal advice on whether they are entitled to bring a case.

What happens if a UK court decides that a public authority has breached the Convention rights protected by the HRA?

If a UK judge decides that a public authority has unlawfully interfered with a victim's Convention rights in breach of the HRA they can give that person any relief or order currently in their power by way of remedy, including an award of damages or payment of compensation.

In addition the HRA requires judges to interpret all legislation in a way which is compatible with the Convention, "so far as it is possible to do so". This means that the judge must make every effort to make the requirements of the legislation comply with

the rights enshrined in the Convention. If this is not possible, the judge can declare subordinate legislation (like an Order in Council or a statutory rule) invalid. However, a UK Court is not allowed to declare primary legislation (Acts of Parliament) invalid. Judges in the higher UK Courts (including the High Court and the Court of Appeal in Northern Ireland) can make a **declaration of incompatibility**, saying that the primary legislation as it stands is incompatible with the Convention. It is then up to Parliament to decide if it wants to replace the legislation. If Parliament decides not to change the law, a victim of the law can take their case to Strasbourg and ask the European Court to decide if the UK has breached the Convention.

What happens in Northern Ireland?

The HRA applies in Northern Ireland. The Convention rights also underpin the Northern Ireland Act 1998, so that the Assembly Ministers and Northern Ireland departments will be acting outside their powers if they breach the rights. Therefore every public authority must ensure that the Convention rights of people in Northern Ireland are safeguarded. Anyone in Northern Ireland who feels that their rights have been breached can now rely on the Convention before any court in Northern Ireland. The High Court and the Court of Appeal in Northern Ireland are allowed to make a **declaration of incompatibility** in relation to any legislation, and any court can declare invalid any

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piece of subordinate legislation which it rules is incompatible with the Convention. Acts of the Northern Ireland Assembly for the purposes of the HRA and Orders in Council are subordinate legislation. This means that they can be declared void by a court if they breach the HRA. The consequences of error for NI public authorities are therefore very serious.

What does the Human Rights Act say that public authorities have to do?

Everyone who works for a public authority in Northern Ireland is responsible for ensuring that they comply with the HRA and the Convention. This means that you must make sure that you always think about the impact of your actions on the human rights of people in Northern Ireland. This guide will show you how to do this. If a public authority makes a decision or implements a policy which breaches one of the Convention rights, then someone who has been affected by the decision or policy will be able to take that public authority to court.

Summary of the effect of the HRA on public authorities:

- 1. All public authorities must act in a way which is compatible with the European Convention on Human Rights.**
- 2. A statement of compatibility with the HRA must be made when legislation is introduced to Parliament or the Northern Ireland Assembly (under devolution).**

3. Courts must interpret the law compatibly with the Convention and can take action against legislation which is not compatible.

4. Legislation (other than an Act of Parliament) which breaches the HRA can be declared void.

C. The European Court of Human Rights

The European Court was established to ensure that states keep the promises that they made when they ratified the Convention. If a state is accused of violating someone's Convention rights, the victim takes their case to the European Court, once they have exhausted all domestic remedies. The European Court then decides whether the Convention has been breached. The European Court is made up of judges from each state which has ratified the Convention, and is permanently based in Strasbourg, France.

What happens if the European Court decides that the UK government has breached the Convention?

Once the European Court makes its judgement, the UK must take steps to remedy the situation which caused the breach. The European Court may also decide to award damages to the victim. The **Committee of Ministers** is responsible for ensuring that states comply with the European Court's judgement.

D. Principles which the European Court has established

The European Court has an important role in interpreting the Convention in such a way as to give effect to the Convention's object and purpose; i.e. the protection of human rights, and to promote and maintain the ideals and values of a democratic society. The Convention is made up of a series of Articles, most of which affirm a right; for example Article 2 is the "right to life". Each Article is a short statement which defines a right or freedom, together with any lawful exceptions. The European Court therefore has had to develop a number of **principles** to help it to interpret the Convention and apply it to the wide range of facts which it has been confronted with.

The Convention as a "living instrument"

One of the first things the European Court decided was that the Convention should be treated as a "living instrument". Society today is very different to that in the 1950s, when the Convention was drafted. This has led to the need for new categories of rights to be read into the Convention, for example the changing position as regards the rights of children. If the European Court were to restrict the application of the Convention to situations envisaged by its 1950s drafters, the Convention would offer patchy protection in modern society. The European Court has

therefore decided to accept the principle that the scope of the Convention and its application can change over time, as society develops. Linked to this is the principle that the European Court is not obliged to follow its previous decisions when deciding a new case. A case which may have failed in the 1950s may succeed now.

The margin of appreciation

The European Court has also accepted that there are areas in which national authorities are in a better position to decide what is best for their people than the European Court. This is particularly so where circumstances require that rights be balanced against, for example, wider social or economic needs, or to cases where the law is not consistent across states. This is referred to as the margin of appreciation. Whether the European Court allows a **wide** or **narrow** margin of appreciation depends on how important the right in question is, how much the right has been interfered with, and whether the state had a good reason for acting in the way that it did.

Proportionality

The principle of proportionality is best described by the maxim; "don't use a sledgehammer to crack a nut". When taking decisions which may affect an individual's rights, a public authority must make sure that it tries to interfere with the right as little as possible. For example, imagine that the government wants to improve safety on the

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roads. They discover that children are more likely to be killed when crossing roads than adults, and decide to ban all children from being within one mile of a road. This response is disproportionate to the aim of improving road safety because there are a number of alternative policies which could achieve the same aim and which would interfere less with the rights of the children.

Positive obligations

Most of the Convention is concerned with things which the state must not do, and put states under an obligation to refrain from interfering with a right. However, the European Court has decided that in order to make the Convention effective, a number of rights also place positive obligations on states. These require the state to **take action** to prevent the breach of a right. For example, if someone's life is at risk, the state may have to take steps to intervene to protect them. Articles which include positive obligations will be identified throughout the guide.

Derogations

The drafters of the Convention accepted that there are sometimes situations when a state needs to limit some rights, beyond what is allowed for in each Article, to protect the wider interests of its people. It is for this reason that states are allowed to **derogate** from (i.e. opt out of) certain rights in extreme circumstances. To do this, a state will write to the Secretary-General of the Council of Europe to tell them that a particular Article,

or a section of a particular Article, will not apply in their country for a time. The state can only do this if there is a public emergency which requires it to restrict or deny a right in a way which would not normally be allowed by the Convention. For example, if a state is at war, it may decide to enter a derogation to Article 10 (freedom of expression), because it does not want people spreading enemy propaganda. Derogations must be made by the national government. In the case of Northern Ireland some derogations have been made by the UK government. However, not all rights can be derogated from. These non-derogable rights will be clearly identified throughout the guide.

Limitations - Articles 8-11

Every Convention right (apart from Article 3) is limited in some way. These limitations will be explained in relation to the individual articles. However, the limitations allowed under Articles 8-11 are based on similar grounds, and are explained below.

There are specific lists of areas where interference with the right or freedom in Articles 8-11 is allowed, as long as the interference complies with the following three conditions;

1. There must be a **legal basis** for the interference. The words used in the Articles are either 'prescribed by law' or 'according to the law'. For this to be satisfied, the law being used to justify the interference must :

- a. Have some basis in national law.
 - b. Be accessible i.e. people should know that the law exists.
 - c. Allow for people to be able to foresee the consequences which an action will entail. For example, it is reasonable to say that someone who commits a murder should be able to foresee that if they are caught, they will be put in prison.
2. The action/interference must seek to achieve a **legitimate aim**. Legitimate aims vary from Article to Article. They are set out in each Article and include issues like “in the interests of national security”, the “prevention of disorder or crime”, and “public safety”. If a public authority needs to interfere with one of the rights contained in Articles 8-11, then it must make sure that the aim of its policy falls under one of these permitted aims.
3. The action must be **necessary in a democratic society**. This means that the action or interference must be in response to ‘a pressing social need’, and must be no greater than that necessary to address the social need, i.e. it must be proportionate.

In addition, in Articles 8-11 there may sometimes be a requirement to **balance** the rights of one individual or group against competing rights of another individual or group. For example, one person’s right to freedom of expression may conflict with

another person’s right to a private and family life and these competing rights must be balanced.

Guidance on Procurement and Contracting Out Services

Taking account of and being in a position to meet and promote HRA standards may require careful consideration where service provision is being contracted out.

In many cases the requirement to meet convention rights will carry forward to the appointed contractor. If the contractor fails to meet these standards a public authority may find itself being held responsible for breaches of convention rights by its contractor.

However, the courts have not always treated the convention rights as applying to a contractor by operation of law. As a result a public authority needs to ensure that human rights obligations are made transparent and fully accounted for in the procurement process.

This means that the HRA should be taken into account from the outset when a public authority is deciding if it wishes to run a procurement process. This stage of identifying a need (setting the user’s requirement) and developing the business case for the service or good to be provided is a key point at which consideration of the HRA should take place to ensure any good or

service is provided in a way that takes account of the HRA and is compatible with the Convention Rights.

Such consideration should follow through to the subsequent development of specifications. Staff involved in developing specifications and user requirements have a good deal of scope in decided core requirements and these should reflect human rights obligations along with the test of need, affordability and cost effectiveness in the conditions of contract.

Specification, process of selection, tender evaluation and contract management should always be subject to professional advice from procurement practitioners either from Central Procurement Directorate within DFP or a relevant Centre of Procurement Expertise (CoPE) who are responsible under public procurement policy for managing procurement activity throughout the public sector on behalf of Departments and their associated bodies and in specific cases may require legal advice from DSO. Further information on procurement can be accessed on the CPD website @ www.cpdni.gov.uk.

What's next

The next section of the guide will deal with each Article and Protocol in turn, and explain them in more detail. When reading through the Articles and Protocols, and in particular when looking at the case scenarios, try to bear in mind the principles detailed in this section.

Summary of the principles:

- The Convention as a “living instrument”
- Margin of appreciation
- Proportionality
- Positive Obligations
- Derogations

part two

the articles and
protocols

ARTICLE 2

RIGHT TO LIFE

WHAT?

WHAT IT MEANS:

- Everyone's right to life must be protected by the law
- There are 3 exceptions to the right to life. A public authority can only take life as a last resort and in the following circumstances:
 1. When defending someone from **unlawful** violence.
 2. When **lawfully** arresting someone or preventing the escape of someone **lawfully** detained.
 3. When **lawfully** trying to stop a riot or insurrection.



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 2

Article 2 affects all public authorities particularly:

- PSNI
- NIPS
- DHSSPS
- Social Services
- DOE
- Care Homes
- DE

HOWEVER...

The force used must be *absolutely necessary*. Even if the actions taken by the public authority fall into one of the three exceptions, if

there was a viable alternative to taking life, the authority will nevertheless be in *breach* of Article 2.

Article 2 also includes a positive duty on public authorities to protect life;

- When a public authority is aware of a real and immediate threat to someone's life.
- If a person is under the care of a public authority, then the public authority is under a particular duty to safeguard that person's life.

DOES ARTICLE 2 AFFECT ME?



- Yes** – if you make policy decisions which may affect someone's right to life.
- Yes** – if your job involves caring for other people or protecting them from danger
- Yes** – if your job involves investigating deaths
- Yes** – if you have power of arrest
- Yes** – if you are a police officer or a prison officer
- Yes** – if you suspect that someone's right to life is at risk.

MUST REMEMBER

- Take legal advice as early as possible
- The right to life cannot be derogated from, even in a time of war or emergency.
- The right to life does not include the right to die.



WHAT MUST A PUBLIC AUTHORITY DO?

1. If a public authority knows that someone's life is at risk from a particular known danger then it **MUST** take reasonable steps to protect the person.
2. If a public authority undertakes care of a person, for example by putting them in prison or placing them in a home, then it **MUST** take reasonable steps to ensure that the person is safe.
3. If a death has been caused by a public authority, the death **MUST** be investigated effectively. The European Court of Human Rights has established a number of procedural guidelines which must be followed in carrying out investigations.
4. If a public authority is planning an operation which **MAY** result in the taking of life, the control and organisation of the operation must respect the requirements of Article 2.



CAN YOU MAKE A JUDGMENT ON ARTICLE 2?



STORY 1



Adrian is a school pupil. One of his teachers develops an unhealthy interest in him, although there is no indication that the interest is sexual or dangerous. However, over a period of time the teacher's conduct gets more bizarre, including giving Adrian presents, taking photos of him, graffitiing the school building with information about him, stealing his personal file from the school, and changing his name to Adrian's. The police are informed at various stages of the teacher's behaviour but take no action. Eventually the teacher is fired. Adrian's house is vandalised numerous times but there is no proof that the teacher is responsible. The teacher then shoots and kills Adrian's father and injures Adrian. Adrian thinks the police did not safeguard his father's right to life. Is he right?

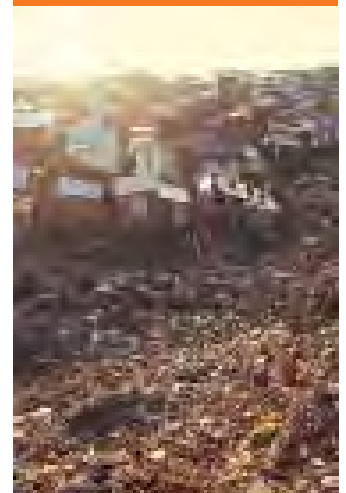
STORY 2

Bette has been diagnosed with a progressive and terminal medical condition, which will affect her muscles, and lead to a long, drawn-out illness before she dies. Her quality of life will greatly suffer in the latter stages of her illness. There is no cure. She will, however, retain her mental faculties, and will be able to make competent decisions. When she reaches the stage where she no longer has a satisfactory quality of life, she wishes her husband to assist her in committing suicide. This is illegal in her country but Bette thinks that her 'right to life' should include a right to decide when her life ends. Is she right?



STORY 3

A number of slum dwellings have been illegally erected near a rubbish tip. A series of expert reports have warned the authorities that there is a danger of methane explosions. There is a substantial delay before the local authorities decide to take action, as there is a dispute over which authority is responsible for the area. In the meantime, an explosion occurs and several people are killed. Are there Article 2 implications?



TURN TO PAGE 47 FOR CORRECT ANSWER

ARTICLE 3

PROHIBITION OF TORTURE AND OF INHUMAN AND DEGRADING TREATMENT

WHAT?

WHAT IT MEANS:

Torture, inhuman and degrading treatment or punishment are absolutely forbidden. There are no exceptions.

There is a minimum level of severity which must be met before treatment or punishment will be considered as torture, inhuman or degrading. Conduct only has to fall foul of one of these for there to be an Article 3 breach.



WORDS EXPLAINED

TORTURE -

deliberate inhuman treatment, whether physical or mental, causing very serious and cruel suffering.

INHUMAN TREATMENT -

treatment which is less severe than torture but still causes intense physical and mental suffering.

DEGRADING TREATMENT -

occurs if it arouses in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing him or her.

HOWEVER...

There is no set level of behaviour which will constitute a breach of Article 3. This is because the European Court has said that the level of treatment is *subjective*; each individual

will react differently to the same treatment so what may be degrading for one person may not be degrading for another. Factors which the European Court has said will be taken

into account in a subjective test include the age, sex, vulnerability and state of health of the victim, the duration of the treatment and the mental and physical effects of the treatment.

DOES ARTICLE 3 AFFECT ME?

- Yes -** if your job involves caring for other people.
- Yes -** if your job involves detaining people or looking after those in detention.
- Yes -** if you are in a position where you may witness people in situations which may be inhuman or degrading.
- Yes -** if you suspect that someone's Article 3 rights are being interfered with unlawfully.





WHAT MUST A PUBLIC AUTHORITY DO?

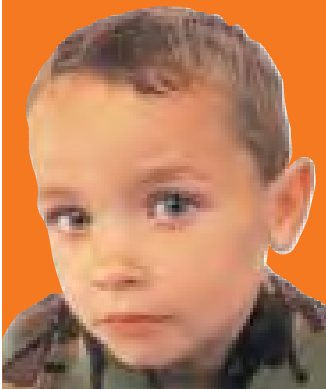
1. If you work for a public authority and provide a service for people you should always be careful not to take any action which could result in torture, inhuman or degrading treatment.
2. If you work in an area where someone may be inadvertently placed in a humiliating position, for example in nursing homes or hospitals, you must at all times be aware of your responsibilities under Article 3.
3. There is a positive obligation on public authorities to intervene to stop torture, inhuman or degrading treatment or punishment as soon as they become aware of it, even if it is being carried out by a private individual.
4. There is a positive obligation on states to investigate any allegations of torture, inhuman or degrading treatment.
5. A public authority may be held responsible for the actions of its employees.

CAN YOU MAKE A JUDGMENT ON ARTICLE 3?



STORY 1

Andrew is 10 years old. He has been turning up at school in dirty clothing, he rummages through the bins for food and he exhibits behavioural problems. Social Services are alerted, but decide to leave Andrew in his mother's care. A year later, the situation has not improved, and Andrew is removed. He has been psychologically affected because of the length of time he has been subjected to abuse. Is there an Article 3 breach?



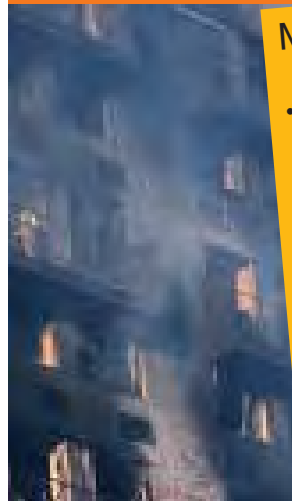
STORY 2



Bethany has a severe disability. She is sent to prison for 7 days for contempt of court. However, the prison lacks the facilities to care for Bethany. She is unable to sleep in the bed provided for her, she cannot access the toilet facilities without substantial help, and she is constantly cold. Bethany thinks that she is being kept in conditions which amount to degrading treatment. Is she right?

STORY 3

The security forces in the country where Chad lives are attempting to combat terrorism, and decide to burn the village in which he lives. They remove Chad and his family from his house and destroy the house and his possessions, while Chad watches. Chad thinks that this treatment is so severe that it constitutes a breach of Article 3. Is he right?



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 3

Article 3 affects all public authorities particularly:

- **NIPS**
- **DHSSPS**
- **DE**
- **Local Councils**
- **NIHE**
- **Social Services**
- **Care Homes**

MUST REMEMBER

- Take legal advice as early as possible
- Article 3 cannot be derogated, from even in a time of war or emergency.
- Even if conduct is not of sufficient severity to amount to torture, or inhuman treatment, there will still be an Article 3 breach if the behaviour is considered degrading.

TURN TO PAGE 48 FOR CORRECT ANSWER

ARTICLE 4

PROHIBITION OF SLAVERY AND FORCED LABOUR

WHAT?

WHAT IT MEANS:

- Slavery and servitude are absolutely forbidden.
- Forced or compulsory labour is also forbidden.

HOWEVER...

- The Article states that there are 4 types of work which are not to be considered as forced or compulsory labour.
 - Work done during legitimate detention or on conditional release from detention (i.e. community service).
 - Compulsory Military Service or service as a conscientious objector. (This is not applicable in Northern Ireland because we have no National Service requirement).
 - If an emergency or calamity threatens the life or well-being of the community, people can be required to work to help out.
 - Any work which forms part of a normal civic obligation.

DOES ARTICLE 4 AFFECT ME?

- Yes** – if you are involved in human resources.
- Yes** – if you work with the public and suspect that someone is being forced to work without suitable recompense.
- Yes** – if you have powers to make people work in an emergency.

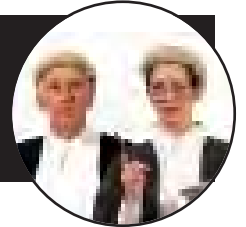




WHAT MUST A PUBLIC AUTHORITY DO?

1. All staff must be properly recompensed for the work that they do.
2. There is a positive obligation on public authorities to intervene to stop slavery, servitude or forced or compulsory labour as soon as they become aware of it.

CAN YOU MAKE A JUDGMENT ON ARTICLE 4?



STORY 1

Adamma is training to be a dentist. There is a system in place in her country which means that when Adamma qualifies, she will have to work for a short time in a rural part of the country, where there is a severe shortage of dentists. Adamma doesn't want to do this, even though she will be paid for her work. She thinks that this is a form of forced or compulsory labour, and is therefore a breach of her Article 4 rights. Is she right?



STORY 2

Branka was brought into the country by Mrs B. who paid for her journey, confiscated her passport and then forced her to work with no pay and no holidays for several years. Branka wore second hand clothes and did not have her own room. Mrs B.'s next door neighbour thinks that Branka is being kept in breach of her Article 4 rights, and calls the police. Is she right?



STORY 3

Chuong lives in an area which requires all the men who live there to perform service as a voluntary fire-fighter. There are enough fire-fighters in Chuong's area so he has to pay a fire service levy instead. Chuong thinks that this is unfair, and that requiring him to either volunteer as a fire-fighter or pay a levy is a breach of his Article 4 rights. Is he right?



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 4

Article 4 affects all public authorities particularly:

- **NIPS**
- **DHSSPS**
- **Social Services**
- **DE**
- **Local Councils**
- **NIHE**
- **Local Councils**
- **DARD**

MUST REMEMBER

- Take legal advice as early as possible
- Article 4 cannot be derogated from, even in a time of war or emergency.
- Forced labour is not limited to physical work.
- Modern problems of forced labour or slavery include human trafficking and sex slavery.

TURN TO PAGE 48 & 49 FOR CORRECT ANSWER

ARTICLE 5

RIGHT TO LIBERTY AND SECURITY

WHAT?

WHAT IT MEANS:

- Everyone has the right to liberty and security of person.

HOWEVER...

There are 6 circumstances when someone's liberty can be restricted, as long as it is *prescribed by law*;

1. If they have been convicted by a Court.
2. If they have not obeyed a Court Order or fulfilled a legal obligation, e.g. they have not paid a criminal fine.
3. If they have been arrested and are to be brought before the *competent legal authority on reasonable suspicion* of committing a crime, or it is reasonably considered necessary to detain them to prevent them committing an offence or fleeing after doing so. Once arrested or detained they should be brought *promptly* before a judge and should be either tried within a reasonable time period, or released pending trial.
4. If they are a minor, they can be detained for schooling or for bringing them before a

competent legal authority.

5. If they have been detained to stop the spreading of an infectious disease or if they are of unsound mind, an alcoholic, a drug addict or a vagrant.
6. If they are attempting unauthorised entry into the country or are to be deported or extradited.

In addition, once someone has been arrested they must *promptly* be informed, in a *language they understand*, of the reasons for the arrest and of any charges made against them.

They will also have the right to have a speedy court decision made on the lawfulness of their detention and to be released if the detention is unlawful. If they have been detained or arrested unlawfully they have the right to compensation.



DOES ARTICLE 5 AFFECT ME?

- Yes** – if you have the power to arrest or detain any person.
- Yes** – if you can limit or curtail a person's liberty.
- Yes** – if you suspect that someone's Article 5 rights are being interfered with unlawfully.



MUST REMEMBER

- Take legal advice as early as possible.
- Article 5 is aimed at preventing arbitrary arrest or imprisonment.
- Article 5 does not just apply to the police and to prisons. Any situation in which a person is detained against their will is subject to Article 5.
- Article 5 can be derogated from.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 5

Article 5 affects all public authorities particularly:

- PSNI
- NIPS
- DHSSPS and their Agencies
- Social Services
- DE
- Care Homes



WHAT MUST A PUBLIC AUTHORITY DO?

1. Ensure that any detention is legal and justifiable.
2. Ensure that conditions are appropriate for the detainee.
3. Take all reasonable steps to speedily secure a legal decision by a court.
4. Obtain reliable evidence for detention on mental health grounds, from an objective medical expert.
5. Tell the person detained in a simple, clear, non technical way why they are being deprived of their liberty.

CAN YOU MAKE A JUDGMENT ON ARTICLE 5?



STORY 1

Abu has been detained under his country's Mental Health Act, which allows the authorities to detain a person of unsound mind. Abu is initially held in an ordinary 'open' psychiatric hospital, but absconds on two occasions. He is therefore transferred to a psychiatric hospital which has greater security restrictions on patients. After a period of time here, Abu is judged to be sufficiently responsible to be returned to the open hospital he was first admitted to. However, in the interim period, the nurses at the open hospital have decided, in conjunction with their trade union, to refuse to look after any patients who have previously been held in a high security hospital. While this dispute is being resolved, Abu has to remain in the high security hospital. Finally, he is allowed to return to the open hospital, where he has much greater freedom, including being allowed to leave the hospital unescorted. Abu claims that the authorities breached his rights under Article 5 by detaining him in the high security hospital after he had been judged able to return to the open hospital. Is he right?



STORY 2

Brian is an asylum seeker. He left his country of origin and stayed in Country A for some months before attempting to gain entry to Country B. However, he is stopped at the airport in Country B and is held there (in transit) for 20 days. At night, the police transfer Brian to a hotel, where accommodation has been leased for the purpose, and return him to the airport in the morning. Brian is held for 15 days before a humanitarian organisation puts him in touch with a lawyer and because of this an application for a court order on the lawfulness of his detention is not submitted until he has been held for 17 days. Brian is refused leave to enter Country B and is returned to Country A, which undertook not to return him to his country of origin. After he has been deported the Court in Country B says that his detention was unlawful. Brian thinks that his treatment in Country B breached his right to liberty. Is he right?



STORY 3

Connie has joined a cult. The authorities in her country intervene and get a Court Order which releases Connie to the care of her family. The judge suggests that Connie should receive voluntary psychiatric assistance. The police transfer Connie (against her will) to a hotel where her family are waiting. Connie is kept in a hotel room for several days, without her consent, while she is 'deprogrammed' by a psychiatrist and a psychologist. Although the police are not involved in keeping Connie in her hotel room, they do interview her afterwards, at the hotel, to ask her questions about the cult. When Connie is finally allowed to leave she makes a complaint, saying that she was unlawfully deprived of her liberty. Is she right?



TURN TO PAGE 49 - 50 FOR CORRECT ANSWER

WHAT?

WHAT IT MEANS:

- Everyone has the right to a fair trial.

Trials must:

- Allow for fair participation by the parties
- Be held within a reasonable time
- Be overseen by an independent, impartial tribunal established by law
- Be public, although press and public access may be restricted on certain grounds.

Article 6 applies to both criminal and civil matters and offers further protection to persons accused of a criminal offence. These additional protections can be found in the text of Article 6.

A person has a right to a fair trial in civil matters. The right to a fair trial in relation to “civil rights and obligations” is more complex than its application in criminal cases. The right applies to civil cases between private individuals, and in some circumstances between a private individual and a public authority.

Not every dispute between a public authority and a private individual will fall under Article 6; for example, issues of public law such as taxation will not incorporate a right to fair trial because public law is not a civil right or obligation. Matters which do fall under Article 6 include most court cases (civil and criminal) and any issues which relate to the use of or enjoyment of property, such as planning

decisions, any decisions concerning the awarding of licences, family proceedings, and some areas of benefits awards. This list is not exhaustive; the European Court will make judgements based on individual facts. Therefore, the best route is for each public authority to build in the right to a fair trial to any process of awards or decisions.

As a general guide, there are 3 areas which the European Court will look at when deciding if a dispute concerns a civil right or obligation;

1. A legal right has to be involved, i.e. the subject of the dispute must concern something which the complainant has a right to, as opposed to something which is at the discretion of a public authority.
2. The subject of the dispute must exist under national law.
3. The dispute must be *civil* (not purely administrative) in nature.

The practical outcome of these rules can be seen in the stories.



DOES ARTICLE 6 AFFECT ME?



- Yes –** If you process benefits, awards, permits, licences or deal with appeals and decisions.
- Yes –** If you make decisions regarding putting a child in care, or deal with parental access to a child in care, adoption and fostering.
- Yes –** If you are involved in policy making.
- Yes –** if you suspect that someone’s Article 6 rights are being interfered with unlawfully.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 6

Article 6 affects all public authorities particularly:

- NIHE
- SSA
- CSA
- Northern Ireland Court Service
- DE
- DSD
- Licensing Authorities
- Local Councils
- Planning Service
- DARD



WHAT MUST A PUBLIC AUTHORITY DO?

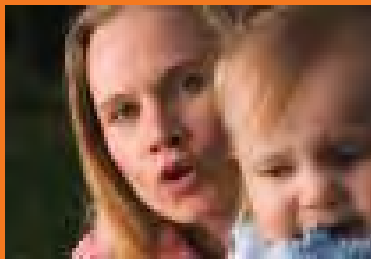
1. Build in the right to a fair trial to any process of awards, appeals or decisions.
2. Ensure that clients have access to an interpreter if needed.
3. Ensure that any appeals process is readily available and easily understood.
4. Ensure that adequate time and facilities are given to prepare a defence or an appeal.
5. Even if the original process is not compliant an appeal process which is compliant will remedy the defect.

CAN YOU MAKE A JUDGMENT ON ARTICLE 6?



STORY 1

Andrea's children have been taken into care. The decision to take them into care is reviewed by a district court, which finds in favour of Andrea, and orders that her children be returned to her. Social Services appeal this



decision and the appeal court order the district court to revisit its judgment. The district court then retries the case, but again decides that the children be returned to Andrea, although it requires her to undertake some family counselling. Social Services appeal the case again, and present new evidence before the appeal court, which decides in their favour and makes an order for the children to stay in care. However, Andrea was not informed of the new evidence which was put before the appeal court, and so she did not have a chance to respond to it. She thinks that this is unfair and breaches her right to a fair trial. Is she right?

STORY 2

Ben is given a licence to run a taxi and a licence for carrying passengers and goods along an interurban route. The public authority responsible for the licences decides to revoke his licence in favour of licensing a bus company. Ben complains that although he is able to appeal this decision, there is no independent tribunal. Is this a breach of Ben's Article 6 rights?



STORY 3

A law states that there is a compulsory disability welfare benefit which must be paid to persons who meet certain criteria. Charlie is refused this monthly disability allowance and takes the authority responsible for the decision to court. The entire proceedings, including an appeal, take 6 years, at the end of which the court decides that he is entitled to the allowance. Charlie complains to the European Court that the length of time it took for him to get a final judgment is in breach of his Article 6 right to a fair trial within a reasonable time. The government argues that this is a matter of public law and is not a civil right or obligation and so Article 6 did not apply. Is Charlie right?



MUST REMEMBER

- Take legal advice as early as possible
- It is important to bear in mind the purpose of the Convention when deciding if Article 6 affects your work area.
- Article 6 can be derogated from in a time of national emergency.
- Article 6 does not guarantee an absolute right to legal aid in all civil cases.
- The right to a fair trial is one of the rights most often relied upon in court cases.

TURN TO PAGE 50 FOR CORRECT ANSWER

ARTICLE 7

PROHIBITION OF RETROSPECTIVE CRIMINAL LAW

WHAT?

WHAT IT MEANS:

- Criminal law cannot be applied retrospectively i.e. if an act becomes a criminal offence, any person who committed the act before it was made a crime is not guilty of the crime.
- This also applies to 'omissions to act', i.e. to circumstances where a person should have acted, but did not.
- In addition, a heavier penalty cannot be imposed for a crime which was committed when the penalty was more lenient.

HOWEVER...

- If, at the time the act (or omission) was committed, the act was contrary to the general law of civilised nations, then trial and / or punishment is allowed.
- This exception allowed for legislation which would punish war crimes, treason and collaboration with the enemy following WWII.

DOES ARTICLE 7 AFFECT ME?

Yes - If you work with legislation to create or amend criminal law.





WHAT MUST A PUBLIC AUTHORITY DO?

1. Take account of Article 7 when creating legislation which introduces or amends criminal law.
2. Ensure that offences are clearly defined in law.
3. Ensure that criminal laws are not applied retrospectively.

CAN YOU MAKE A JUDGMENT ON ARTICLE 7?



STORY 1



Adam is a Jehovah's Witness. In his country, it is illegal to try to convert people to your faith by any direct or indirect attempt to intrude on their beliefs with the aim of undermining those beliefs by fraudulent means or by taking advantage of inexperience, trust, need, low intellect or naivety. Adam is arrested under this law. He thinks that this is in breach of his Article 7 rights, because the provision is so wide that it would encompass any attempt to convert someone. Is he right?

STORY 2

Brooke is arrested on drug charges. She is later charged with possession with intent to supply. At her trial she is found guilty and sentenced to prison. In addition the judge issues a confiscation order on her property in line with a new Act of Parliament. However, this Act only came into force after Brooke was charged. Brooke thinks that this confiscation order is unfair because at the time when she committed her crime, confiscation was not one of the penalties which the crime attracted. Is Brooke right?



STORY 3

Colin is a member of the Security Council in East Utopia. East Utopia is having difficulties with citizens trying to cross the border to West Utopia. In an attempt to stop this, legislation is put in place in East Utopia which allows border guards to take extreme measures to stop the border crossings, but only as a last resort and if it is absolutely necessary. Colin issues orders to the guards authorising the use of force in any circumstances. As a result, numerous people are killed while trying to cross the border. Later, East and West Utopia are united, and Colin is put on trial and convicted. He says that he hasn't committed a crime because he was acting according to the law in East Utopia at the time, and claims that under Article 7 he can't be punished retrospectively. Is he right?



MUST REMEMBER

- Take legal advice as early as possible
- Article 7 only applies to criminal law resulting in a conviction or the imposition of a penalty.
- Article 7 cannot be derogated from in time of war or emergency
- Article 7 puts a positive obligation on states to provide effective safeguards against arbitrary prosecution, conviction and punishment.

TURN TO PAGE 51 FOR CORRECT ANSWER

ARTICLE 8

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

WHAT?

WHAT IT MEANS:

Everyone has the right to respect in relation to their;

- Private Life
- Family Life
- Home
- Correspondence

HOWEVER...

Policies and decisions which interfere with Article 8 rights are allowed only if they are;

- **Prescribed by law** and;
- The aim of the policy or decision is **necessary in a democratic society** in the interests of one or more of the following;
 - national security
 - public safety
 - the economic well-being of the country
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of the rights and freedoms of others



WORDS EXPLAINED

Private Life Generally, a person has the right to live their life **free from interference**. The phrase 'private life' covers all aspects of a person's identity, self-determination, and moral and physical integrity. For example, private life under Article 8 covers freedom of lifestyle choice, freedom from harassment and unwarranted surveillance, and freedom from having personal information held about you unnecessarily. As there is no set definition for what constitutes a person's private life you should take care to consider all possible ways that a person's private life could be affected when making decisions or implementing policies. However, this does not mean that there is an absolute right to privacy.

Family Life The right to respect for family life extends to people with whom a person has close personal ties, and allows for these relationships to be respected and recognised in law. You should ensure that you consider the effect of any decision you make on the family of the person you are dealing with, as well as on the person themselves. Family members' rights may conflict, and may therefore need to be balanced.

Home The concept of what establishes a home is not covered by Article 8, but it has been made clear that it can extend to cover a place of business, and is not limited to those who own the property. A person has the right to enjoy their home peacefully. This includes the right not to have public authorities entering a home or preventing access to it, unless the interference is justified. A person also has the right to enjoy their home free from excessive pollution.

Correspondence Correspondence is defined broadly, and includes modern communications such as emails or telephone calls, as well as correspondence by letter. You should not interfere with a person's correspondence without a justifiable reason.



DOES ARTICLE 8 AFFECT ME?

- Yes** – if you have access to personal information
- Yes** – if you have right of entry to properties (including businesses)
- Yes** – if you are involved in any form of surveillance or investigation
- Yes** – if you work with children
- Yes** – if your work involves dealing with families or vulnerable people.
- Yes** – if you suspect that someone's Article 8 rights are being interfered with unlawfully.



WHAT MUST A PUBLIC AUTHORITY DO?

1. Where possible, a public authority should try not to make policies or decisions which interfere with someone's right to respect for family and private life.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's private or family life, then it must be lawful and be for one of the allowed reasons.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 8 when you make your decision.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 8

Article 8 affects all public authorities particularly:

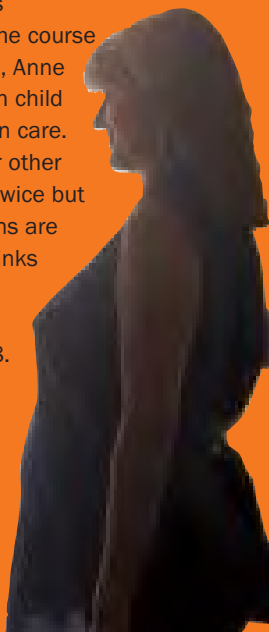
- **DHSSPS**
- **DARD**
- **DOE**
- **Social Services**
- **PSNI**
- **NIO**
- **DETI**
- **DOE**

CAN YOU MAKE A JUDGMENT ON ARTICLE 8?



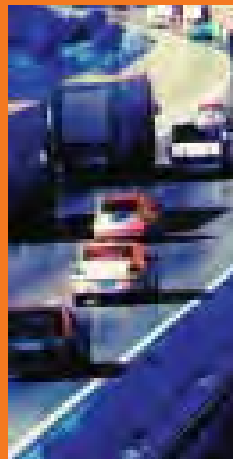
STORY 1

Anne suffers from schizophrenia. She has two children and is pregnant with her third child. Her children are taken into care through emergency orders and she is not allowed unsupervised access. As soon as her baby is born, he is made the subject of an emergency care order and is taken away from her. All of the emergency care orders are later replaced with normal care orders, the children are placed in foster care 100 miles from Anne, and the access restriction is prolonged. Anne applies to have the care orders revoked but is unsuccessful. Over the course of the next few years, Anne gives birth to a fourth child which is not placed in care. The care plan for her other children is revisited twice but the access restrictions are maintained. Anne thinks that Social Services have breached her rights under Article 8. Is she right?



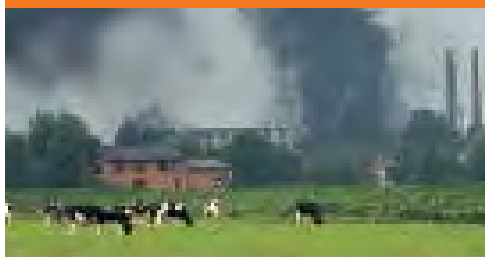
STORY 2

Bob and his family are Travellers. They settle on a site provided by the council for those with a nomadic lifestyle. They pay their bills and taxes to the District Council. The authority evicts them for causing a nuisance. Bob thinks this unfair. Is he right?



STORY 3

Chandra lives very close to a factory which produces noxious fumes and nasty smells. Chandra thinks that this violates her right to peaceful enjoyment of her home. Is she right?



MUST REMEMBER

- Take legal advice as early as possible
- Article 8 is one of the Convention rights which may require you to strike a balance between an individual's private rights and the needs of society as a whole.
- The right to respect for private and family life is one of the rights most often relied upon in court cases.
- Generally, states are accorded a wide margin of appreciation under Article 8 because the criteria for legitimate interference are subjective and national authorities should be in a better position to judge their application than the European Court.
- Public authorities have a positive obligation to take action to secure Article 8 rights, as well as refrain from interfering with them.
- All policies and decisions which interfere with Article 8 rights must be proportionate.
- Possible link to Article 12 (right to marry and found a family).

TURN TO PAGE 51 - 52 FOR CORRECT ANSWER

ARTICLE 9

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

WHAT?

WHAT IT MEANS:

- Everyone has the right to freedom of;
 - Thought
 - Conscience
 - Religion
- This includes the right to change religion or beliefs and the right to worship, teach, practice and observe religion or beliefs either in public or in private (called freedom to manifest in the text of the Article).

Limitations can be placed on the freedom to manifest religion or beliefs only if they are;

- **Prescribed by law** and;
- **Necessary in a democratic society** in the interests of one or more of the following
 - Public safety
 - The protection of public order, health or morals
 - The protection of the rights and freedoms of others

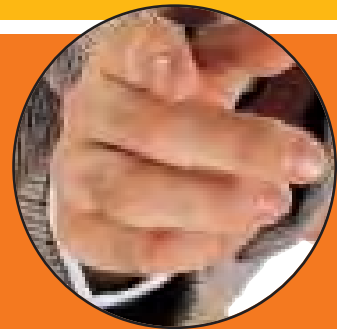
DOES ARTICLE 9 AFFECT ME?

Yes – if you are responsible for public order, the protection of health and morals, or public safety.

Yes – if you have to take decisions which may contravene an individual's religious beliefs e.g. medical intervention.

Yes – if you are responsible for human resources decisions.

Yes – if you suspect that someone's Article 9 rights have been interfered with unlawfully.





WHAT MUST A PUBLIC AUTHORITY DO?

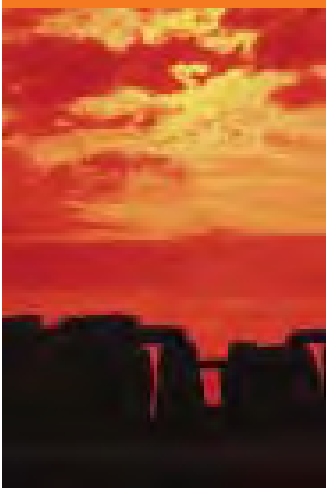
1. Where possible, a public authority should try to ensure policies or decisions do not interfere with someone's freedom of thought, conscience and religion.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's freedom of thought, conscience or religion, then it must be lawful and be for one of the allowed reasons.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 9 when you make your decision.

CAN YOU MAKE A JUDGMENT ON ARTICLE 9?



STORY 1

A national heritage site which is traditionally used by druids during the summer solstice has been closed by the authorities who decided that managing the festival and ceremony caused too many difficulties. They are allowed to do this under an Act which protects monuments. Anya is a druid. She thinks that by closing the site, the authorities are unlawfully interfering with her Article 9 rights. Is Anya right?



STORY 2

Local regulations on the humane slaughtering of animals mean that religious groups which require their meat to be slaughtered ritually must apply for a licence. The main organisation for Jews in the country has been given responsibility for licensing slaughterhouses and ensuring that they comply with regulations. However, Organisation B, a religious body of ultra-orthodox Jews, is not part of this main body and applies for a licence of its own so that they can operate glast slaughterhouses. Glast meat is produced from an animal which is slaughtered as kosher but with the additional requirement for a detailed examination of the animal's organs, particularly its liver, for any signs of disease. Their application is refused. Organisation B thinks that this is a breach of its members Article 9 rights. Is it right?



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 9

Article 9 affects all public authorities particularly:

- NIHE
- DOE
- Human resources
- DETI
- Social Services
- NIPS
- Local Councils
- DE
- PSNI

STORY 3

Cheng has just been elected to his country's Parliament. The 'swearing-in' oath of the Parliament has traditionally referred to the country's gospels. Cheng thinks that this is requiring him to profess allegiance to a particular faith, and that this breaches his Article 9 rights. Is Cheng right?



MUST REMEMBER

- Take legal advice as early as possible
- Article 9 is one of the Convention rights which may require a balancing between an individual's private rights and the needs of society as a whole.
- All policies and decisions which interfere with Article 9 rights must be proportionate.
- The HRA (s. 13) says that if a court or tribunal case will affect the rights of a religious organisation under this Article, the court must have particular regard to the importance of the right.

TURN TO PAGE 52 - 53 FOR CORRECT ANSWER

ARTICLE 10

FREEDOM OF EXPRESSION

WHAT?

WHAT IT MEANS:

Everyone has the right to freedom of expression.

- This includes;
 - Freedom to hold opinions
 - Freedom to receive and impart information and ideas
- These freedoms should not be subject to interference by public authorities, and apply regardless of frontiers.
- Licensing of broadcasting, television, and cinema enterprises is still allowed

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 10

Article 10 affects all public authorities particularly:

- **Press Offices**
- **Human Resources**

HOWEVER...

Policies and decisions which interfere with Article 10 rights (i.e. which censor, limit or prohibit freedom of expression) are allowed only if they are;

- **Prescribed by law** and;
- **necessary in a democratic society** in the interests of one or more of the following;
 - national security
 - territorial integrity

- public safety
- the prevention of disorder or crime
- the protection of health or morals
- the protection of the reputations or rights of others
- the prevention of the disclosure of information received in confidence
- the maintenance of the authority and impartiality of the judiciary

What is included?

The term 'expression' is very wide. It includes speeches, lectures, writings, photographs, broadcasts, thoughts and ideas. As new forms of digital media develop they will also be included. It also includes artistic expression and political opinions and discourse. Controversial forms of expression, such as racist speech or hate speech or pornography are theoretically included. However, lawful restrictions on the freedom of expression in these areas are possible.

DOES ARTICLE 10 AFFECT ME?



- Yes -** If you are involved with broadcasting, media and press work.
- Yes -** If you are responsible for speech writing or briefings.
- Yes -** If you are involved in policy making.
- Yes -** if you suspect that someone's Article 10 rights are being interfered with unlawfully.

MUST REMEMBER ←

- Take legal advice as early as possible
- Article 10 is one of the Convention rights which may require balancing between an individual's private rights and the needs of society as a whole.
- All policies and decisions which interfere with Article 10 rights must be proportionate.
- Generally, states are accorded a wide margin of appreciation under Article 10 because the criteria for legitimate interference are subjective and national authorities should be in a better position to judge their application than the European Court.
- The right to express political views and opinions is particularly important.
- The Convention says that the right to freedom of expression carries with it duties and responsibilities.
- If a court or tribunal is going to grant an order which will affect someone's freedom of expression, the HRA (s. 12) sets out conditions outside which the order must not be granted and matters to which the court must have regard before granting the order.





WHAT MUST A PUBLIC AUTHORITY DO?

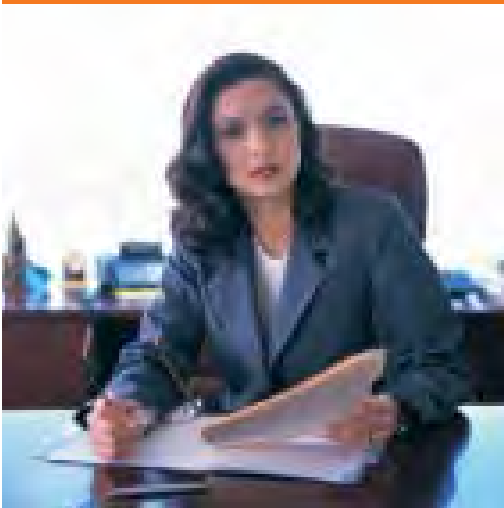
1. Where possible, a public authority should try to ensure that policies or decisions do not interfere with freedom of expression.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's freedom of expression, then it must be lawful and be for one of the allowed reasons.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 10 when you make your decision.
5. Public authorities must take action to secure Article 10 rights, as well as refrain from interfering with them.

CAN YOU MAKE A JUDGEMENT ON ARTICLE 10?



STORY 1

Anita is a member of a City Council and an elected representative of her country's Parliament. During a council debate, she criticises the policies of the ruling party and questions their involvement with Association X, which she refers to as a "sect". Association X takes Anita to court; seeking an injunction to stop her repeating her comments, which it says was a statement of fact which Anita cannot prove. The Court grants the injunction. Anita thinks that this is an interference with her right to freedom of expression. Is she right?



STORY 2

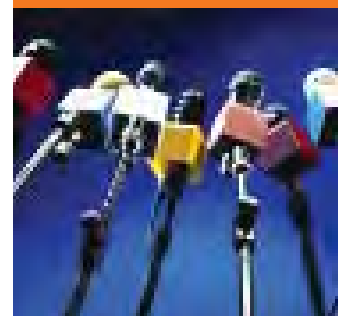
Benazir is a journalist. She writes an article for a newspaper which refers to information contained in a book written by Agent X, an ex Secret Service agent.



The government in her country is in the process of trying to stop Agent X's book from being published. It goes to Court to get an injunction which stops the newspaper from publishing any further information. Subsequently the book is published in other countries, and some people within Benazir's country buy copies which are sent to them. A second newspaper reports details of the book, and the government applies for a ruling which will make the injunction apply across all newspapers. The country's court agrees, and makes a ruling that no newspaper in the country should report any information from the book. Benazir, her editor, and the editor of the second newspaper think that this is an unlawful interference with their Article 10 rights. Are they right?

STORY 3

Carlos is a senior local government officer. He is also Chair of a local branch of a national political party. The government introduces legislation which prevents senior local government officers who hold politically sensitive positions from being actively involved in party politics. They say that this is necessary because the officers need to be seen to be politically neutral in order to retain the confidence of elected councillors and the general public. Carlos has to step down as Chair, and he thinks that this is a breach of his right to freedom of expression. Is he right?



TURN TO PAGE 53 - 54 FOR CORRECT ANSWER

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

WHAT?

WHAT IT MEANS:

Everyone has the right to freedom of:

- Peaceful assembly
- Association with others
 - This includes the right to form and / or join a trade union.

HOWEVER...

Policies and decisions which interfere with Article 11 rights are allowed only if they are;

- **Prescribed by law** and;
- **Necessary in a democratic society** in the interests of one or more of the following;
 - national security
 - public safety
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of the rights and freedoms of others

The state is allowed to further limit the Article 11 rights of the armed forces, the police and

civil servants, as long as these limitations can be justified.

Peaceful assembly applies to static meetings, marches, public processions and demonstrations. BUT, the right must be exercised peacefully, without violence or the threat of violence, and must be in accordance with the law.

Freedom of association confers a right on individuals to come together or group for a common role. BUT, it does not include the right to join a particular association nor to compel a person to join an association.

DOES ARTICLE 11 AFFECT ME?

- Yes -** if you are involved with making decisions regarding public gatherings, protests, demonstrations or marches.
- Yes -** if you are involved with Trade Unions.
- Yes -** if you are involved in policy making.
- Yes -** if you suspect that someone's Article 11 rights are being interfered with unlawfully.



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 11

Article 11 affects all public authorities particularly:

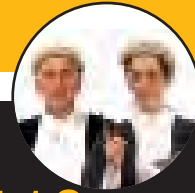
- Trade Unions
- Human Resources
- DFP
- PSNI

MUST REMEMBER

WHAT MUST A PUBLIC AUTHORITY DO?

1. Where possible, a public authority should try to ensure that policies or decisions do not interfere with the freedom of peaceful assembly and association.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's Article 11 rights, then it must be lawful and be for one of the allowed reasons.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 11 when you make your decision.
5. Public authorities must take action to secure Article 11 rights, as well as refrain from interfering with them.

- Take legal advice as early as possible
- Article 11 is one of the Convention rights which may require balancing between an individual's private rights and the needs of society as a whole.
- All policies and decisions which interfere with Article 11 rights must be proportionate.
- Generally, states are accorded a wide margin of appreciation under Article 11 because the criteria for legitimate interference are subjective and national authorities should be in a better position to judge their application than the European Court.
- The right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.



CAN YOU MAKE A JUDGEMENT ON ARTICLE 11?

STORY 1

Aaron is part of a pro-life organisation which objects to abortion. The organisation decides to hold a protest march against abortion, and applies to the police in his country for permission. Their proposed route is approved. A pro-choice group which supports abortion finds out about the march, and applies for permission to hold a counter demonstration. The police refuse on the grounds of public safety, and warn Aaron's organisation of the counter-demonstrators' plans. On the day of the protest march the illegal counter-demonstration interrupts proceedings. The police stand back until violence breaks out, when riot police intervene to provide a protective cordon. Aaron thinks that the police didn't do enough to adequately protect his Article 11 rights. Is he right?



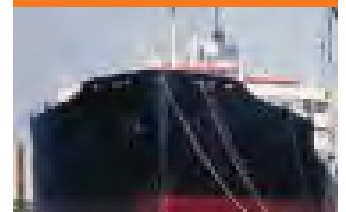
STORY 2



Bianca is a lawyer and is vice-president of her country's Lawyer's Union. She takes part in a demonstration which criticises a proposed Act and recent court decisions to imprison militants. Bianca carries a sign which states her profession. During the demonstration abusive language is directed at judges and lawyers, and graffiti is sprayed on public buildings, although it is not possible to identify the perpetrators. A court rules that Bianca should be disciplined under her professional code for not leaving the demonstration or disassociating herself from the demonstrators' actions. Bianca thinks that this breaches her Article 11 rights. Is she right?

STORY 3

Cesar is employed by a Port Authority which is a private company. He is part of a Trade Union which is recognised by the Port Authority for the purposes of collective bargaining. Cesar receives a letter from the Port Authority telling him that they have decided to offer individual contracts to staff who don't want to be part of the collective agreement with the Union. Staff who sign individual contracts will receive a 10% pay increase. Cesar stays in the Union, and only gets a pay increase of 8.9%. Later, the Port Authority terminates the collective agreement. Cesar thinks that the Port Authority's actions are in breach of his Article 11 rights. Is he right?



TURN TO PAGE 54 - 55 FOR CORRECT ANSWER

ARTICLE 12

THE RIGHT TO MARRY AND FOUND A FAMILY



WHAT?

WHAT IT MEANS:

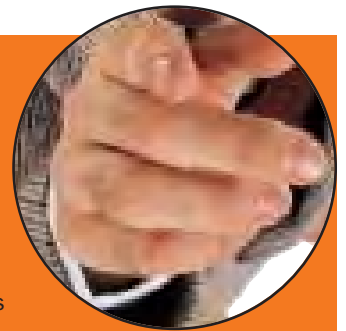
- Men and women have the right to marry and found a family.

HOWEVER...

- They must be of marriageable age.
- The right is limited to those who are permitted to marry in national law.



DOES ARTICLE 12 AFFECT ME?



- Yes –** if you make decisions which may impact on someone's right to marry and found a family.
- Yes –** if you are involved in policy making.
- Yes –** if you are reviewing or revising existing policy.
- Yes –** if you are making a new law or amending an existing law.
- Yes –** if you are a registrar.
- Yes –** if you work in the medical profession.



WHAT MUST A PUBLIC AUTHORITY DO?

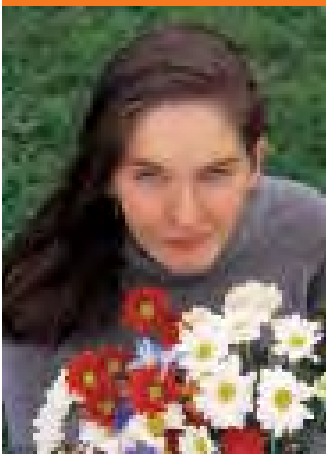
1. Where possible, a public authority should try to ensure that policies or decisions do not involve any restrictions on the right to marry or found a family.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's right to marry or found a family, then it must be lawful and pursue a legitimate aim.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 12 when you make your decision.

CAN YOU MAKE A JUDGEMENT ON ARTICLE 12?

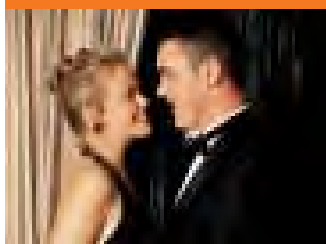


STORY 1

Amanda is a post-operative male to female transsexual. Laws in place in her country at the time she had her operation meant that she was not able to change the sex on her birth certificate in order to be legally recognised as a female and therefore cannot marry her male partner. Amanda thinks that this breaches her Article 12 right to marry. Is she right?



STORY 2



Blake married for the second time several years ago, but left his second wife to live with another woman. During the divorce proceedings, and in accordance with his country's law, a judge banned him from remarrying for one year. After the ban expired, he married for the third time, but left his wife after three months of marriage to take up with a former mistress. At his third divorce proceedings, the court banned him from remarrying for three years, again in accordance with national law. Blake thinks that these bans interfere unfairly with his Article 12 rights. Is he right?

STORY 3

Chris is divorced. He wishes to marry his son's ex-wife, and has been living with her for several years. His grandson calls Chris "dad" and Chris intends to adopt him as his son once he marries his grandson's mother. Although the adoption is allowed under their country's law, the marriage is not. According to national law, if both Chris's ex-wife and his son were deceased, then he could marry his daughter-in-law. However, as both are still alive, the law does not permit Chris to marry her. Chris thinks that this law is in breach of his Article 12 right to marry. Is he right?



WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 12

Article 12 affects all public authorities particularly:

- DHSSPS
- DSD
- CSA

MUST REMEMBER

- Take legal advice as early as possible
- The Convention is a living instrument, and the European Court of Human Rights will widen the scope of Article 12 in line with advances in medicine, science and changes in societal values.

TURN TO PAGE 55 - 56 FOR CORRECT ANSWER

ARTICLE 14

PROHIBITION OF DISCRIMINATION

WHAT?

WHAT IT MEANS:

Everyone is entitled to enjoy their Convention rights without discrimination on any ground, such as:

- Sex
- National or social origin
- Race
- Association with a national minority
- Colour
- Property
- Language
- Birth
- Religion
- Other Status
- Political or other opinion

HOWEVER...

A state is allowed to treat people differently if it has an objective and reasonable justification for doing so. For example, if a state discriminates in favour of a group of people who have traditionally been discriminated against in order to achieve an overall balance of treatment, it will be able to argue that it has a good reason for treating people differently.

Article 14 only prohibits discrimination in relation to Convention rights. This means that Article 14 must be attached to another Convention right before a claim of discrimination will be heard. Examples of how this works in practice can be found in the stories.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY ARTICLE 14

Article 14 affects all public authorities particularly:

- **Policy Makers**
- **Law Makers**
- **Law Enforcers**
- **Service Providers**
- **Recruitment Services**

DOES ARTICLE 14 AFFECT ME?

- Yes** – if you make decisions which may impact on ANY Convention rights of an individual.
- Yes** – if you are involved in policy making.
- Yes** – if you are reviewing or revising existing policy.
- Yes** – if you are making a new law or amending an existing law.





WHAT MUST A PUBLIC AUTHORITY DO?

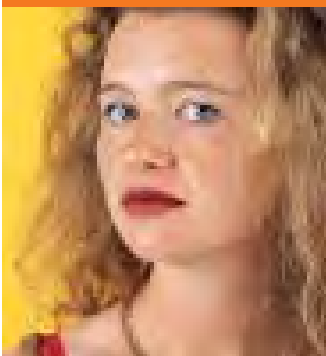
1. Where possible, a public authority should try to ensure that policies or decisions do not involve any form of discrimination on any grounds.
2. If it is necessary to treat some people more favourably than others, there must be an objective and reasonable justification for it.
3. Any interference with Article 14 must pursue a legitimate aim and be proportionate.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Article 14 when you make your decision.

CAN YOU MAKE A JUDGMENT ON ARTICLE 14?



STORY 1

Alice's father died before she was born. He had intended to marry Alice's mother once Alice was born. However, under her country's law, Alice was born illegitimate, and her father's estate passed to his siblings because he had not made a will. Although Alice was later recognised as legitimate by a court order, in accordance with the law, she was only to be acknowledged as legitimate from that point on and so could not claim any part of her father's estate. Alice thinks that she was discriminated against in relation to her Article 8 right to family life. Is she right?



STORY 2

Brett is a gay man living in a country where there is a higher age of consent for sexual relations between homosexual men than there is for heterosexuals or



lesbians. Brett thinks that he is being discriminated on the grounds of sexual orientation in relation to his rights under Article 8 (his right to a private life). Is he right?

STORY 3

Caleb is a Jehovah's Witness. The government in his country has issued a general mobilisation order, but Caleb refuses to wear military uniform. He is convicted of a criminal offence by a military court and serves a prison sentence. Later on he applies for a job as a chartered accountant but is refused because the law in Caleb's country does not allow for anyone convicted of a crime to



work as a chartered accountant. Caleb thinks that this is unfair because the only reason he had been guilty of committing a crime was because of his religious beliefs. He thinks that this should have been taken into account by the authorities before they banned him from becoming an accountant. Caleb claims that he has been discriminated against in exercising his Article 9 right to freedom of religion. Is he right?

MUST REMEMBER

- Take legal advice as early as possible
- Article 14 is referred to as the 'parasite' Article, because it has to be attached to another Convention right in order to be argued.
- It is not necessary for there to be a violation of a substantive Article for Article 14 to be applied.
- A national authority is allowed to treat people 'unequally' if they are attempting to correct an existing disadvantage.
- The grounds listed are not exhaustive.
- Public Authorities also have equality duties under Section 75 of the Northern Ireland Act 1998 and anti-discrimination laws. These are separate from duties under Article 14.

TURN TO PAGE 56 - 57 FOR CORRECT ANSWER

PROTOCOL 1

ARTICLE 1

PROTECTION OF PROPERTY

WHAT?

WHAT IT MEANS:

- Every natural or legal person is entitled to the peaceful enjoyment of their possessions.

HOWEVER...

- A state can deprive someone of their property as long as it is;
 - In accordance with the law
 - In accordance with the general principles of international law
 - In the public interest
- A state can enforce laws which control the use of property;
 - In accordance with the general interest, or;
 - To secure the payment of taxes or other contributions or penalties



WORDS EXPLAINED

Natural or legal person: The right is expressed in this way to make it clear that protection extends to businesses as well as to individuals because businesses are considered to be legal persons.

Possessions and property have a wide meaning. This includes land, houses, leases, money and personal property. It also covers intangible things such as shares, goodwill in a business, patents and some forms of licences including those which allow people to exercise a trade or profession. Contributions which people make towards a future social security benefit are also classified as property.

DOES PROTOCOL 1 ARTICLE 1 AFFECT ME?



- Yes -** if you are involved in policy making.
- Yes -** if you work in any area which can deprive people of their possessions or property.
- Yes -** If you take decisions about planning, licensing or allowing people to exercise a trade or profession
- Yes -** If you have powers of vesting or compulsory purchase

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY POTOCOL 1, ARTICLE 1

Article 1 affects all public authorities particularly:

- **DOE**
- **DARD**
- **District Councils**
- **DSD**

WHAT MUST A PUBLIC AUTHORITY DO?

1. Where possible, a public authority should try to ensure that policies or decisions do not interfere with the right to peaceful enjoyment of possessions.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with someone's possessions, then your interference must be lawful and be for one of the allowed reasons.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Protocol 1, Article 1 when you make your decision.
5. Public authorities should take action to secure Protocol 1, Article 1 rights, as well as refrain from interfering with them.

MUST REMEMBER

- Take legal advice as early as possible
- Protocol 1, Article 1 is one of the Convention rights which may require *balancing* between an individual's private rights and the needs of society as a whole.
- The right to property also includes a right to dispose of property

CAN YOU MAKE A JUDGMENT ON PROTOCOL 1, ARTICLE 1?



STORY 1

Aitana is granted a lease for a piece of industrial land by the local District Council. The lease is for 22 years, and requires Aitana to erect 6 new buildings on the land (at her expense), which she does. It also contains an option to renew the lease when it ends, for a further period of 21 years. After 22 years, Aitana applies to get her lease renewed. In the intervening period, the District Council was amalgamated with another Council and became known as the City Council. The new Council has refused Aitana's application because it says that the old Council had no authority to offer her a renewal clause in her lease agreement. Aitana thinks that the City Council is interfering with her Protocol 1, Article 1 rights. Is she right?

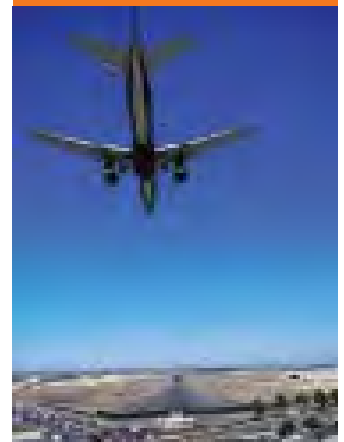


STORY 2

Brad is a waiter. Whenever customers in the restaurant leave a tip for Brad as part of their cheque or credit card payment for their meal, the owner of the restaurant includes this as 'additional pay' in Brad's payslip. Under his country's Pay As You Earn (PAYE) legislation, the owner must include credit card and cheque tips in the assessment of an employee's contribution for national insurance and income tax. As the tips are considered as 'pay' Brad's tips form part of his minimum wage. Brad thinks that this is unfair, as the tips are intended for him and are therefore his property, which the owner should give to him in addition to his wage. Brad brings a case and the court in his country decides that the payments are made to the employer and are therefore his property. As such, the owner is allowed to treat the tips as being part of Brad's minimum statutory pay. Brad thinks that his Protocol 1, Article 1 rights are being breached. Is he right?



STORY 3



Airline X operates regular flights into another country's airport. Customs officials at this airport inspect one of Airline X's planes and discover a large consignment of drugs in the hold. The customs officials confiscate the aeroplane and only return it to Airline X when a forfeiture fee of £50,000 is paid. Airline X claims that this is a breach of their rights under Protocol 1, Article 1. Are they right?

TURN TO PAGE 57 - 58 FOR CORRECT ANSWER

PROTOCOL 1

ARTICLE 2

RIGHT TO EDUCATION

WHAT?

WHAT IT MEANS:

- No-one should be denied the right to education.
- The state must respect the rights of parents to ensure that State education and training conforms to their religious and philosophical beliefs.
- This applies to all functions which a state undertakes in relation to education.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY PROTOCOL 1, ARTICLE 2

Article 2 affects all public authorities particularly:

- DE
- DEL
- Education Boards
- Education Providers

HOWEVER...

A state is NOT required to provide:

- Education of a particular type.
- Education to a particular level.
- Right of access to a particular school.

DOES PROTOCOL 1 ARTICLE 2 AFFECT ME?

- Yes** – if you are a non-school based education provider
- Yes** – if you are a teacher or school administrator
- Yes** – if you work in education policy
- Yes** – if you provide funding for schools or other forms of education



MUST REMEMBER

- Take legal advice as early as possible
- The right to education includes the right of access to such educational establishments as exist (although entry requirements are allowed).
- The right to education includes the right to an effective education.
- The right to education includes the right to official recognition of academic qualifications.
- A state will generally be given a wide margin of appreciation in matters of education.
- The suspension or expulsion of children from school is allowed.





WHAT MUST A PUBLIC AUTHORITY DO?

1. Where possible, a public authority should try to ensure that policies or decisions do not interfere with the right to education.
2. Where this is unavoidable, you must try to interfere as little as possible, and make sure that any interference is proportionate.
3. If you do decide that it is necessary to interfere with the right to education, then your interference must be lawful.
4. You may be asked to produce reasons for your decision so you must make sure that you have considered the implications of Protocol 1, Article 2 when you make your decision.
5. Public authorities should take positive action to secure Protocol 1, Article 2 rights, as well as refrain from interfering with them.

CAN YOU MAKE A JUDGMENT ON PROTOCOL 1, ARTICLE 2?



STORY 1

April attends a state school. In her country, it is compulsory for all pupils to take place in a school march to commemorate a national war. April is a Quaker, and therefore a pacifist. She refuses to join in the parade and her parents keep her off school on the day of the parade. April is temporarily suspended from school for one day for not attending. Her parents think that this breaches their rights under Protocol 1, Article 2. Are they right?



STORY 2



East and West Utopia are ruled by separate governments. People in West Utopia speak a different language to the Utopian language spoken in East Utopia. The government in West Utopia provide primary school education in the East Utopian language, but abolished the provision of secondary education in the East Utopian language when they came to power. Now, any secondary school pupil who wishes to be taught in Utopian must travel across the border into East Utopia. Is West Utopia breaching the Protocol 1, Article 2 rights of parents who wish their children to be brought up in accordance with their convictions?

STORY 3

Mr and Mrs Conway have a daughter who is at primary school. The authorities have introduced compulsory sex education to the curriculum for state primary schools. The authorities also offer substantial financial assistance to private schools, and as these private schools are not subject to the compulsory sex education course, parents who do not want their children to undertake these courses can send them to a private school. However, Mr and Mrs Conway feel that the nearest private school to their house is too far away for their daughter to travel. They claim that the authorities are breaching Protocol 1, Article 2 by making the sex education course compulsory in state primary schools. Are they right?



TURN TO PAGE 58 - 59 FOR CORRECT ANSWER

RIGHT TO FREE ELECTIONS

▶ WHAT?

WHAT IT MEANS:

- Free elections must be held at reasonable intervals.
- The elections must be conducted by secret ballot.
- Election conditions must allow for the free expression of the people's opinion in the choice of the legislature (Parliament in the UK).

DOES PROTOCOL 1 ARTICLE 3 AFFECT ME?



- Yes – if you oversee or have decision making powers about voting rights.
- Yes – if you are involved in arranging elections.
- Yes – if you look after people who cannot vote without action on your part.

WHICH PUBLIC AUTHORITIES ARE AFFECTED BY PROTOCOL 1, ARTICLE 3

Article 3 affects all public authorities particularly:

- **NIPS**
- **PSNI**
- **DHSSPS**
- **Care Homes**
- **Health Trusts**
- **Electoral Office**





WHAT MUST A PUBLIC AUTHORITY DO?

1. Respect the voting rights of individuals.
2. Enable those with a right to vote to use their vote if they wish to do so.

CAN YOU MAKE A JUDGMENT ON PROTOCOL 1, ARTICLE 3?



STORY 1

Alfie is convicted of a crime and is sent to prison. The law states that convicted prisoners do not have the right to vote in any elections. Alfie thinks that this law is unfair and breaches his rights under Article 3 of Protocol 1. Is he right?



STORY 2

Becca lives in a dependent territory of Country A. Country A sends elected representatives to the European Parliament. However, those who live in the dependent territory are not given a vote on which representatives Country A sends. Country A says this is not necessary because the rules which established the European Parliament are not enough to constitute it as a parliament and that the sphere of activity undertaken by the European Parliament does not always apply in the territory. Becca thinks that she should have the right to vote in the elections to the European Parliament and that her rights under Protocol 1, Article 3 are being breached. Is she right?



STORY 3



Carlotta works for a private company. Her company seconds her to work for the Prime Minister of her country, as Deputy Head of his private office. Her secondment lasts for thirty months. A year later, Carlotta stands for election to Parliament, and wins. However, in her country there is a law which states that civil servants are not allowed to become elected members of Parliament if they have been employed in certain positions in the civil service for more than three months in the three years prior to an election. As a result of this law, Carlotta's election is ruled invalid by her country's Supreme Court. Carlotta thinks that this is unfair as she was not employed by the civil service while working for the Prime Minister, and so was not a civil servant. She claims that her Protocol 1, Article 3 rights have been breached. Is she right?

MUST REMEMBER

- Take legal advice as early as possible
- States are allowed to choose the method by which people are elected, i.e. proportional representation, first past the post etc.

TURN TO PAGE 59 - 60 FOR CORRECT ANSWER

ARTICLE 15

DEROGATION
IN TIME OF
EMERGENCY

What Article 15 means;

States are allowed to derogate from their obligations under certain Convention rights in time or war or other public emergency.

This is further explained in the introduction to the Guide.

ARTICLE 16

RESTRICTIONS
ON THE
POLITICAL
ACTIVITY OF
ALIENS

What Article 16 means;

The rights in Article 10 (freedom of expression), Article 11 (freedom of peaceful assembly and association) and Article 14 (prohibition on discrimination) do not stop a state from being able to impose restrictions on the political activity of people who do not have formal residence in the state.

ARTICLE 17

PROHIBITION
OF ABUSE OF
RIGHTS

What Article 17 means;

No state, group or person can use any of the rights in the Convention to justify any activity or act which aim to destroy other Convention rights, or limit them to an extent not provided for in the Convention.

ARTICLE 18

LIMITATION
ON THE USE
OF
RESTRICTIONS
ON RIGHTS

What Article 18 means;

Articles in the Convention set out certain circumstances when a state is allowed to limit a right or freedom. Article 18 means that the state cannot use these limitations to justify restrictions which are not allowed for in the Convention.

Answers

ARTICLE 2 – Right to Life

Story A

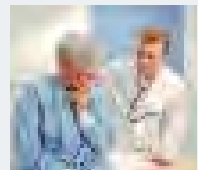
No



Although there is a positive obligation on the state to take appropriate steps to safeguard life, including an obligation to take measures to protect an individual whose life is at risk from the criminal acts of another, the obligation must not be imposed in a way which would impose an impossible or disproportionate burden on state authorities. The European Court of Human Rights accepts that there are difficulties in policing modern societies, that human conduct is unpredictable, and that choices have to be made in terms of priorities and resources. In addition, the police must respect the Convention rights of everyone involved in a situation when assessing the most appropriate action to take. In order for there to be a breach of Article 2 it would have to be proved that the authorities did not do all that they could reasonably have been expected to do to avoid a real and immediate risk to life of which they had or ought to have had knowledge. In Adrian's case, there was not sufficient proof that the teacher posed a real and immediate threat to life, and so the authorities were not in breach of Article 2.

Story B

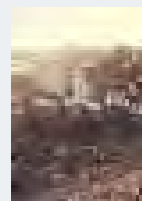
No



The text of Article 2 sets out limited circumstances when deprivation of life may be justified, and states must take all appropriate steps to safeguard life. The constant emphasis of the European Court of Human Rights has been on the obligation on the state to protect life. Article 2 cannot then be said to incorporate the right to die, nor to create a right of self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. Therefore, there is no right to die, either by the hand of a third party, or with the assistance of a public authority, in the European Convention. This does not mean that countries which do allow assisted suicide are in breach of the Convention; it is a matter for each state to decide. This is one of the situations in which states are given a wide margin of appreciation.

Story C

Yes



The authorities knew that there was a risk to life and took no action. If death occurs as a result of a state's negligence, there must be an effective system for investigations and there must be the possibility for remedies to be awarded. If not, then the state will be in breach of Article 2.

ARTICLE 3 – Prohibition of Torture and of Inhuman and Degrading Treatment

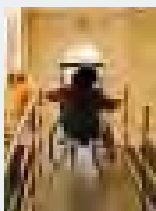
Story A



Yes

Although Social Services are allowed to try to improve the situation at Andrew's home before they resort to removing him, they also have a positive obligation to remove him from danger as soon as they become aware of abuse which may amount to inhuman or degrading treatment.

Story B



Yes

It is not necessary for there to be an intention to humiliate and debase the person concerned for there to be degrading treatment. The conditions in which Bethany is being kept inadvertently subject her to degrading treatment, and so her Article 3 rights have been breached.

Story C



Yes

The damage to Chad's house and the destruction of his possessions was an act of

violence which left Chad without shelter and caused him considerable anguish. This amounts to inhuman treatment and is therefore a breach of Chad's Article 3 rights.

ARTICLE 4 – Prohibition of Slavery and Forced labour

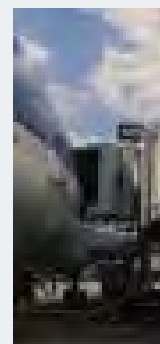
Story A



No

The work which Adamma is being asked to do is not unjust or oppressive. The work is obligatory but is only for a short period. It is work in her chosen profession and she will be properly paid. She will also be working to help her country with an emergency situation. Therefore, the system is not breaching Adamma's Article 4 rights.

Story B



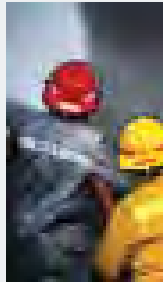
Yes

The conditions in which Branka was being kept constitute at least forced labour, and therefore the public authority (in this example the police) has a duty to intervene as soon as they are made aware of the situation.

Story C

No

The compulsory fire service constitutes a part of Chuong's normal civic obligations. Having to pay a levy instead of serving as a fire-fighter is also a civic obligation and so does not fall foul of Article 4.

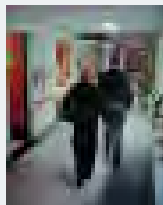


ARTICLE 5 – Right to Liberty and Security

Story A

No

In order for Abu's right to liberty to be breached by the authorities, they must have been depriving him of his liberty unlawfully at the point where he was judged capable of being returned to the open hospital. However, this assumes that the conditions under which patients are kept in the open hospital do not amount to a deprivation of liberty. Even though Abu was given significant freedoms at the open hospital, such as being allowed to leave for short periods of time, he was still being compulsorily detained and treated for his mental condition. The open hospital is a psychiatric hospital, and people are kept there under the Mental Health Act. Therefore, there was no period during which Abu was not lawfully being deprived of his liberty, and as such there is no breach of Article 5.



Story B

Yes

Although states have the right to control the entry of asylum seekers into their country, this must be exercised in accordance with the Convention. Holding asylum seekers in an international zone (i.e. the airport) is a restriction on liberty and is not comparable to holding them in a detention centre where they have access to the proper channels of appeal. They should not be held for excessively prolonged periods otherwise a restriction on liberty becomes a deprivation of liberty. Prolonged deprivation of liberty should be speedily reviewed by the courts and confinement shouldn't deprive asylum seekers from being able to make an effective application to authorities having jurisdiction to rule on their refugee status. In Brian's case, for most of the 20 day period during which he is held in the transit zone of the airport, he is given no legal or social assistance and is under constant police surveillance. The fact that he could have chosen to leave the country on another aeroplane is not sufficient to negate the deprivation of his liberty by keeping him at the airport. Therefore Brian's Article 5 rights have been breached.



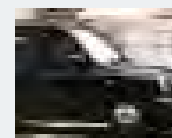
Story C**Yes**

Although the police were not actually involved in depriving Connie of her liberty by keeping her in the hotel room, the fact that they drove her there and interviewed her after her 'deprogramming' showed that they were aware of the deprivation of Connie's liberty, and did not intervene to prevent or stop it. They did not enforce completely the judge's ruling, because he had made it clear that any psychiatric assessment had to be voluntary. Therefore, not only had the authorities acquiesced in the deprivation of Connie's liberty, but without their active cooperation the denial of liberty could not have taken place. As a result, the authorities in Connie's country were in breach of Article 5.

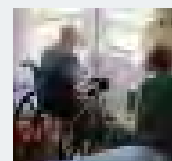
ARTICLE 6 – Right to a Fair Trial**Story A****Yes**

Article 6 requires a fair hearing in both civil and criminal cases. There is a requirement of "equality of arms", meaning that there must be a sense of a fair balance between the parties. Each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage. They also must be

given the opportunity to have knowledge of and comment on the observations filed or evidence presented by the other party. In Andrea's case, because the appeal court relied on evidence which she did not see, her right to a fair trial was breached.

Story B**Yes**

The licence is one of the conditions necessary for the exercise of Ben's business activities. As this is a commercial activity, it falls within the civil rights and obligations category of Article 6 and Ben is entitled to receive a fair trial by an independent tribunal.

Story C**Yes**

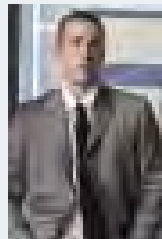
The welfare assistance is a right in law and is not a discretionary award made by a public authority. Charlie suffered interference to an individual, economic right to which he was entitled by statute. Therefore it was a civil matter and Article 6 applied. The length of time taken to try Charlie's case was unreasonable and so there was a breach of Article 6.

ARTICLE 7 – Prohibition of Retrospective Criminal law

Story A

No

Although Article 7 does include the principle that a crime must be clearly defined in law, this is satisfied as long as an individual knows what acts will make him or her liable for the crime. In Adam's case, the law is sufficiently clear for Adam to be able to tell what actions constitute a crime. However, Adam might be able to say that his treatment is a breach of his Article 9 rights to freedom of thought, conscience and religion.



Story B

Yes

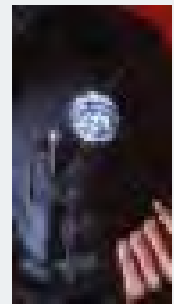
Although the Government argued that the confiscation order does not constitute a penalty because its purpose is to prevent future drug crime being perpetrated with the money, it was decided that one of the aims was also to punish the person who committed the crime (in this case Brooke) and therefore this was a penalty. As the Government were imposing a more severe penalty on Brooke than that which existed at the time she was charged with her crime, it breached Article 7.



Story C

No

It is primarily the responsibility of national authorities to interpret and apply their laws. As long as the law, when the act was committed, is defined with sufficient accessibility and foreseeability, then the European Court will not intervene. In this case, Colin was acting outside the bounds of the law defined at the time and so could not rely on it to provide him with exemption from prosecution. In addition, because Colin's actions resulted in loss of life (contravening Article 2), he could not rely on Article 7 to escape responsibility.



ARTICLE 8 – Right to Respect for Private and Family Life

Story A

Yes

Taking children into care is an interference with a person's right to a family life, and therefore has to be justified. In Anne's case, the interference was in accordance with national law and had a legitimate aim (the protection of health and morals and the rights and freedoms of her children). As such, the emergency care orders



in relation to Anne's two elder children could be considered necessary. However, the removal of her new born baby while Anne was still in the hospital was unnecessary because there were other options open to Social Services which would have been less intrusive; so the emergency care order for Anne's baby breached Article 8. In relation to the normal care orders, the guiding principle is that a care order should be seen as a temporary measure, to be discontinued as soon as circumstances permit. Any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The longer the child is away from its parents, the more onerous this duty becomes. In Anne's case, the restrictions imposed by Social Services hindered any attempt to reunite the family and therefore breached Article 8.

Story B

Possibly

Evicting Bob and his family is a clear interference with Bob's Article 8 rights. However, whether the interference is justifiable depends on the lawfulness of the actions of the complainants, and whether the local authority can show that the aim of their policy of eviction was proportionate, according to the law and absolutely necessary in the interests of national security, public safety, the

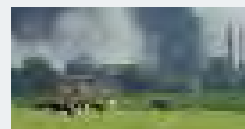


economic well-being of the country, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others. As eviction is a very serious interference with Article 8, it is likely that the local authority will be afforded a narrow margin of appreciation. In addition, the European Court has held that a state has a particular duty to give special consideration to the needs and different lifestyle of Travellers in their regulatory framework and in individual decisions.

Story C

Yes

Public authorities have a positive obligation under Article 8 to protect individuals from any interference with their rights. If the pollution is causing problems for Chandra, then they have an obligation to do something about it.

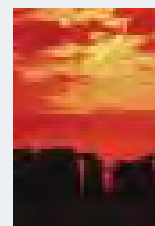


ARTICLE 9 – Freedom of Thought, Conscience and Religion

Story A

No

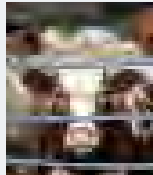
Although the authorities have interfered with Anya's right to



practice her religion, the interference was justified. Firstly, the authorities have acted in accordance with the law, because they had the power to close the site under the Act. Secondly, the reason for closing the site was that the authorities were unable to guarantee the safety of those attending the summer solstice. They were therefore acting in the interests of public safety, which means that they can justify interfering with Anya's Article 9 rights.

Story B

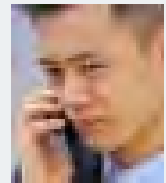
No



A religious or ecclesiastical body is allowed to exercise the rights guaranteed in Article 9, on behalf of its adherents. In addition, ritual slaughter is an essential aspect of the practice of the Jewish religion, and is therefore part of the right to manifest one's religion in observance. However, there is only an interference with Article 9 if the refusal to grant authorisation to Organisation B meant that its members were unable to get glast meat. In this case, it was possible to get glast meat from a neighbouring country, and in addition some of the existing kosher slaughterhouses also made meat certified as glast.

Story C

Yes

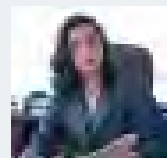


Requiring Cheng to take the oath on a religious icon is an interference with his Article 9 rights. Although the interference is prescribed by law, in that there is an Act which requires the oath, it does not fulfil the legitimate aim of being necessary in a democratic society. Therefore, Cheng's Article 9 rights have been infringed.

ARTICLE 10 – Freedom of Expression

Story A

Yes



Any injunction which limits what a person can say is an interference with their right to freedom of expression. It is therefore up to the state to prove that the interference was lawful and necessary. In Anita's case, because the comments were made during a political discussion, in a democratic forum, by an elected representative of the people, there have to be very pressing reasons for stopping her from criticising the actions of the ruling party, and their relationship with Association X. In addition, by being active in a field of public concern (public policy) and associating with a political party, Association X had put

itself in a position where it could legitimately be criticised. As such, the European Court held that Anita was making a value judgement when describing Association X as a sect, and was not making a statement of fact which had to be proved. The injunction was therefore wrong, and interfered unlawfully with Anita's Article 10 rights.

Story B

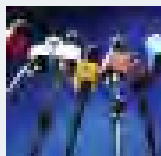
Possibly



The first injunction (taken out against Benazir and her newspaper) was lawful. Even though the press has a responsibility to impart information and ideas on matters of public interest, there are boundaries; for example, where disclosure would jeopardise national security. However, once the book had been published, there were insufficient reasons for continuing to ban reporting. The government should have removed the injunction once the information was no longer confidential.

Story C

No



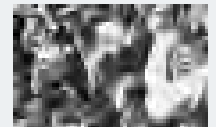
Although Article 10 applies to everyone, regardless of where they work, it is legitimate for a state to impose a duty of discretion on civil servants. Interference with freedom of expression is allowed where it is necessary to

protect the rights of others to effective political democracy. The need for a bond of trust between elected Councillors and those who are charged with providing politically neutral advice is a legitimate aim, and so the interference with Carlos' Article 10 rights is lawful.

ARTICLE 11 – Freedom of Peaceful Assembly and Association

Story A

No



While states have a duty to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely. States also have a wide discretion in deciding what action, if any, should be taken. In Aaron's case, the police remained passive until there was a threat of violence – to act sooner may have provoked violence unnecessarily. As such, the police took all reasonable steps to allow Aaron's organisation to exercise their right to assemble peacefully.

Story B

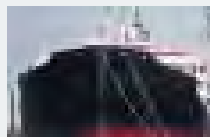
Yes



Bianca has been penalised for attending a lawful demonstration and as such the state interfered with her Article 11 rights. The freedom to take part in a legitimate peaceful assembly is so important that it can't be restricted unless the person concerned commits any reprehensible act during the assembly. As Bianca did not commit any offence, the disciplinary proceedings demanded by the state were not necessary in a democratic society and so unlawfully breached Bianca's Article 11 rights.

Story C

Yes



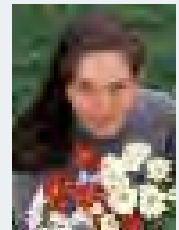
There is a positive obligation on the government to secure the effective enjoyment of Article 11 rights through its laws. In this case the applicable law allows for a voluntary system of collective bargaining, with no legal obligation on employers to recognise Trade Unions for the purposes of collective bargaining. Collective bargaining is not an essential feature for the enjoyment of trade union freedom, and states have a wide margin of appreciation on how to secure such freedom. However, in Cesar's case, the fact that the law permitted the Port Authority to offer financial incentives to employees to

surrender important Trade Union rights meant that the government had failed to secure his Article 11 rights.

ARTICLE 12 – The Right to Marry and Found a Family

Story A

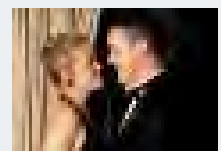
Yes



The Convention is to be treated as a "living instrument" and as such the application of the right to marry should develop in line with changes in society, and developments in medicine and science. Although Article 12 explicitly refers to the right of a man and a woman to marry, in today's society the understanding of who should be seen as a man or woman has changed. Amanda lives as a woman, and so her right to marry has been unfairly limited by not allowing her to marry a man.

Story B

Yes



Although a state can limit a person's right to marry and found a family, such limitations must not reduce or restrict Article 12 in such a way as to impair its essence. For example, a state is allowed to limit the right to marry by imposing a restriction on bigamy, or by

imposing a ban on underage marriage. However, in Blake's case, the ban prevented divorced people from remarrying as they wished, and interfered unlawfully with Blake's Article 12 rights.

Story C

Yes

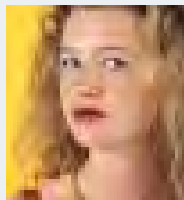


Although the state has a legitimate aim in banning parents-in-law and children-in-law from marrying (preserving family integrity), the ban did not prevent relationships from forming. The relationship is not incestuous and so is not banned by criminal law. As such, the law does unfairly interfere with Chris's Article 12 rights.

ARTICLE 14 – Prohibition of Discrimination

Story A

Yes

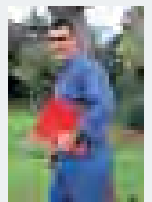


When people die without making a will, the will settlement affects an aspect of the family life of their near relations, so Alice is able to attach her claim of discrimination to Article 8. In addition, it is clear that Alice was discriminated against on the grounds of her birth status. As such, the authorities had to prove that they had an

objective and reasonable justification for the law which allowed this discrimination. They said that even though Alice had been recognised as legitimate, it would be unfair to the people who had already inherited her father's estate to allow her to claim retrospectively. However, by not allowing Alice to have the same rights as a legitimate child, the authorities were disproportionately discriminating against Alice in trying to achieve their aim of treating her father's other relatives fairly.

Story B

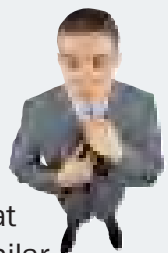
Yes



Brett's private life is being affected by the law because he cannot legally have a sexual relationship with another man until he is 18. In order to justify treating homosexuals differently from heterosexuals and lesbians, the government must have an objective and reasonable justification. As the government does not have a good reason for treating Brett differently, it has unlawfully discriminated against him.

Story C

Yes



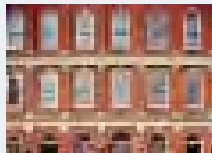
Under Article 14, a state must treat people who are in the same or similar positions in the same way, unless it has a

very good reason not to. However, Article 14 also means that a state must not treat people as being the same when their positions are significantly different (again, unless it has a very good reason). In Caleb's case, the government treated all people convicted of a serious crime as being the same. Caleb's conviction was a result of his religious beliefs, and the state has a duty to recognise this, and to treat Caleb differently.

PROTOCOL 1, ARTICLE 1, Protection of Property

Story A

Yes



The term 'possession' incorporates existing assets. This includes property rights which a person has a legitimate expectation of enjoying (although this does not include property which they hope to receive, or claims that are based on conditions which they have not fulfilled). In Aitana's case she did have a legitimate expectation that her lease would be renewed because she had fulfilled all of the terms of her previous lease, and therefore the Council's refusal to renew did constitute an interference with her Protocol 1, Article 1 rights. In order for the interference to be lawful, there has to be fair balance between the general interests of the community and the individual's rights. Although the Council was able to argue that it was in the general

interest for authorities not to be allowed to go beyond their authority, in denying Aitana's lease, the Council was acting disproportionately.

Story B

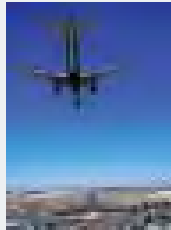
No



The owner of the restaurant is the legal owner of the tips paid through credit cards and cheques because all the transactions are made out in his name. Brad can't claim that he has a right to the tips separately from his right to a minimum wage, or that his pay should be calculated without reference to his tips. The dispute is essentially between two private individuals (Brad and the owner of the restaurant), and so the National Court is in the best place to adjudicate between the two, particularly when it comes to interpreting and applying legislation. The state has a wide margin of appreciation in this regard. Also, Brad doesn't have a legitimate expectation that his tips won't count towards his pay because this would assume that his customers did not intend their tips to contribute towards his pay – which is too imprecise a basis on which to found a claim. Protocol 1, Article 1 can't be used to justify a claim for a higher level of earnings.

Story C**No**

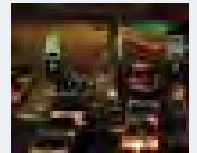
Although Airline X is allowed to make a claim under Protocol 1, Article 1, the seizure of the aeroplane did not constitute a transfer of ownership, and the obligation to pay a forfeiture fee did not deprive Airline X of ownership. The customs officials operated under a legitimate policy of preventing airlines from bringing banned substances into the country and their actions were clearly in the public interest. The authorities charged Airline X a reasonable amount considering the quantity and street value of the drugs which had been found on the aeroplane, and their actions were therefore proportionate to the aim of the policy.



objectives. In addition, the obligation to attend the march did not prevent April's parents from enlightening or advising April on their philosophical and religious beliefs. Therefore the right to education was not breached.

Story B**Yes**

When West Utopia abolished the secondary education schools which taught in East Utopian, it could no longer meet the legitimate wish of East Utopians living in West Utopia to have their children educated in accordance with their cultural and ethnic tradition, and in particular through the medium of the East Utopian language. The total absence of secondary school facilities for the persons concerned could not be compensated for by the authorities' allowing pupils to attend schools in East Utopia. However, children are free to attend other schools in West Utopia, and there is therefore no denial of the right to education in its strictest sense. Also there is no obligation on a state to provide education in certain languages. Despite this, the fact that the authorities in West Utopia provide primary school education in the East Utopian language means that they are under an obligation to make provision for it at secondary level. The government in West Utopia are therefore in breach of Protocol 1, Article 2.

**PROTOCOL 1, ARTICLE 2, Right to Education****Story A****No**

The purpose and arrangements for the parade were not sufficiently militaristic to offend either April or her parents' pacifist convictions to the extent required by Protocol 1, Article 2. The commemoration of the national event could actually be said to meet both the public interest and pacifist



Story C

No

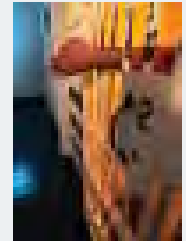


The planning and setting of a curriculum is a matter for each state, and they will have a wide margin of appreciation in deciding what to include. Many subjects which are taught in schools can be said to have some form of philosophical or religious complexion or implication, and it would be impossible for a state to exclude all of these subjects. However, a state must take care that any information or knowledge included in the curriculum is imparted in an objective, critical and pluralistic manner. A state is also forbidden from pursuing an aim of indoctrination when teaching children. In Mr and Mrs Conway's case, the aim of the authorities was to educate children on the subject of sex and to make sure that they were aware of all the issues and facts. Although the authorities have a duty to make sure that individual teachers and schools do not abuse the teaching of compulsory sex education, the overall policy is not a breach of Protocol 1, Article 2. In addition, the existence of a viable alternative (the private school system or home teaching) gives the parents a choice in how their child is educated.

PROTOCOL 1, ARTICLE 3 – Right to Free Elections

Story A

Yes



Article 3 of Protocol 1 obliges states to hold elections which ensure the free expression of the opinion of the people. The European Court's case-law has established that this includes individual rights such as the right to vote. However, this is not absolute and the state is allowed to impose limitations on the rights. Although the state has a wide margin of appreciation in deciding whether to allow prisoners to vote, the blanket ban preventing all prisoners from voting is not proportionate to the aims of preventing crime and punishing offenders, and enhancing civil responsibility and respect for the rule of law.

Story B

Yes



Country A voluntarily entered into a treaty which provided the European Parliament with its powers. The powers of the European Parliament are not merely advisory and supervisory as it is a part of the legislative

60

process of the European Union. Even though not all areas of the European Parliament's activity apply to the territory where Becca lives, there are significant areas where that activity has a direct impact on the territory. Becca had been completely denied any opportunity to express her opinion in the choice of the members of the European Parliament. The position is not analogous to that of persons who are unable to take part in elections because they live outside the jurisdiction, as such individuals have weakened the link between themselves and the jurisdiction.

Story C

No

The right to vote and the right to stand for election are not absolute, and the state has considerable latitude in establishing criteria for disqualifying people from standing for election, as long as the free expression of the will of the people through free, fair and regular elections is guaranteed. In Carlotta's case, the Supreme Court of her country analysed her position and decided that she was subject to the limitations laid down on civil servants. As it is primarily the role of the national courts to interpret domestic



legislation, the European Court of Human Rights will only interfere where the decision is contrary to the legislation, arbitrary, disproportionate or thwarts the will of the people.

part **three**
supporting
documentation

Frequently Asked Questions (FAQs)

What is the Human Rights Act?

The Human Rights Act (HRA) came into force in the UK on 2nd October 2000. It made the rights in the European Convention on Human Rights (ECHR) enforceable in UK courts, making the process quicker and simpler than having to go to Europe to fight a case, as people had to do previously.

What does the HRA do?

The aim of introducing the HRA was to create a society in which people's rights and responsibilities are properly balanced and where an awareness of the Convention Rights permeates government and legal systems at all levels. Another benefit is that a case can now be brought to a court in the UK and people no longer need to go directly to the European Court.

Does this mean a person can no longer bring a case to the European Court of Human Rights?

No, a person can still take a case to Europe. However the European Court will want to know that all domestic remedies have been exhausted first.

What does it mean in practice?

There are very specific changes in practice since the introduction of the HRA, around the rights and freedoms of individuals.

It is unlawful for a public authority to violate Convention rights unless it has no choice because of an Act of Parliament.

Cases can be dealt with in a UK court or tribunal. You do not have to go to the European Court of Human Rights in Strasbourg. Courts can use Convention Rights in deciding cases and must interpret our laws compatibly with the Convention Rights where possible.

UK courts must try to interpret UK legislation in a way which is compatible with Convention rights. If this is not possible courts can strike down incompatible secondary legislation, or can make a declaration of incompatibility in relation to primary legislation (Acts of Parliament).

Does this give judges more power?

Judges have power to declare subordinate legislation invalid under the HRA, if they cannot interpret it in a way which makes it compatible with the Convention. However, they cannot overrule an Act of Parliament. Judges in the higher UK courts can make a declaration of incompatibility if they cannot

interpret primary legislation in a way which is compatible with the Convention, but it remains for Parliament to decide what, if any action to take.

What is a public authority?

There is no functional definition of public authority. However the following are recognised as public authorities;

- Government Departments, Agencies and Non Departmental Public Bodies (NDPB's)
- Local Authorities
- Police, prison and immigration services
- Courts and tribunals

A private contractor exercising a “public function” will often be treated as a public authority automatically, but it is wise for the public authority engaging the contractor to be clear about human rights obligations in the contract.

What difference does the Human Rights Act make?

The HRA helps us all to be clearer about our rights and freedoms and about the basic and fundamental values and standards that we all

share as human beings. It directs public bodies to act with the best interests of the people in mind when making decisions that affect people's lives. It is about respecting the dignity and integrity of persons whatever their background or situation in life.

Does that mean that all legislation is compatible?

No. However only a small number of declarations of incompatibility have been made. Senior judges have commented that the Act has not disrupted the system nor added particularly to the workload of the courts.

Are all rights absolutely guaranteed?

No. Although some are, such as Article 4, others have restrictions or limitations built into the Articles, for example those in Article 8. This means that a public authority is allowed to interfere with certain rights, as long as it meets the conditions specified in each article.

Who can bring a case under the Human Rights Act?

Proceedings can be brought by a “victim”, a person or persons, who feel that one or more of their Convention rights have been breached. This does not mean that the

victim has to be a UK national in order to claim against the state, but they have to be within the UK's jurisdiction. In order to be recognised as a victim a person will have to be directly affected by an act or omission.

What does positive obligation mean?

All public authorities must ensure that respect for human rights is at the core of day to day work. This means acting in a way that positively reinforces the principles of the HRA. The Act makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. This covers all aspects of a public authority's activities including;

- drafting rules and regulations
- decision making
- internal staff issues
- interaction with the public.

Is there a Commission for Human Rights?

Yes, Northern Ireland has one of the first fully fledged Commissions for Human Rights in Europe. The Northern Ireland Human Rights Commission (NIHRC) is based in Belfast and its primary role is to oversee the protection

and promotion of human rights of the people of Northern Ireland. See useful contacts for further information.

Is there any other guidance on the Human Rights Act Available?

Yes, the Department of Constitutional Affairs have produced a detailed study guide on the Human Rights Act, which is available for download on their website

www.dca.gov.uk/hract/studyguide

Is the HRA the same as the European Charter of Fundamental Rights?

No, the European Charter is signed by European Union member states. It is a political charter and has no legal force. It draws together existing civil, political, social and economic rights enjoyed in the member states into a single text making them more visible to the citizen, and also reminds the Union Institutions of the rights that should be respected as they carry out their responsibilities.

Cases used throughout the guide:

(All cases can be found using HUDOC, the European Court of Human Rights Portal, available from the European Court of Human Rights' website at <http://www.echr.coe.int/echr>. The direct link to HUDOC's search page is: <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>)

Cases

Article 2:

Scenario A – *Osman v. United Kingdom*, (App. 23452/94), Judgment of 28 October 1998

Scenario B – *Pretty v. United Kingdom*, (App. 2346/02) Judgment of 29 April 2002

Scenario C – *Oneryildiz v. Turkey*, (App.48939/99) Judgment of 30 November 2004

Article 3:

Scenario A – *Z and Others v. United Kingdom*, (App. 29292/95), Judgment of 10 May 2001

Scenario B – *Price v. United Kingdom*, (App. 33394/96), Judgment of 10 July 2001

Scenario C – *Ayder and Others v. Turkey*, (App. 23656/94) Judgment of 8 January 2004

Article 4:

Scenario A – *Iversen v. Norway*, (App. 1468/62), Judgment of 17 December 1963

Scenario B – *Siliadin v. France* (App. 73316/01), Judgment of 26 July 2005

Scenario C – *Schmidt v. Germany*, (App. 13580/88), Judgment of 18 July 1994

Article 5:

Scenario A – *Ashingdane v. United Kingdom*, (App. 8225/78) Judgment of 28 May 1985,

Scenario B – *Amuur v. France*, (App. 19776/92) Judgment of 25 June 1996

Scenario C – *Riera Blume and Others v. Spain*, (App. 37680/97), Judgment of 9 March 1999

Article 6:

Scenario A – *Buchberger v. Austria* (App no. 32899/96)

Scenario B – *Pudas v. Sweden*, (App. 10426/83) Judgment of 27 October 1987

Scenario C – *Salesi v. Italy*, (App. 13023/87) Judgment of 23 February 1993

Article 7:

Scenario A – *Kokkinakis v. Greece*, (App. 14307/88) Judgment of 25 May 1993

Scenario B – *Welch v. United Kingdom*, (App. 17440/90) Judgment of 9 February 1995

Scenario C – *Streletz, Kessler & Krenz v. Germany*, (Apps. 34044/96, 35532/97 and 44801/98) Judgment of 22 March 2001,

Article 8:

Scenario A – *K. and T. v. Finland*, (App No 25702/94), Judgment of 12 July 2001

Scenario B – *Connors v. United Kingdom*, (App. 66746/01), Judgment of 27 May 2004

Scenario C – *López Ostra v. Spain*, (App. 16798/90), Judgment of 9 December 1994

Article 9:

Scenario A – *Pendragon v. United Kingdom* (App. 31416/96); Commission Decision, 19 October 1998

Scenario B – *Cha'are Shalom Ve Tsedek v. France*, (App. 27417/95) Judgment 27 June 2000

Scenario C – *Buscarini and Others v. San Marino*, (App. 24645/94) Judgment of 18 February 1999

Article 10:

Scenario A – *Jerusalem v. Austria* (App 26958/95) Judgment of 27 February 2001

Scenario B – *Observer and The Guardian v. United Kingdom*, (App. 13585/88), Judgment of 26 November 1991

Scenario C – *Ahmed and Others v. United Kingdom*, (App. 22954/93) Judgment of 2 September 1998, (2000) 29 EHRR 1

Article 11:

Scenario A – *Plattform "Ärzte Für das Leben" v. Austria*, (App. 10126/82), Judgment of 21 June 1988

Scenario B – *Ezelin v. France*, (App. 11800/85), Judgment of 26 April 1991

Scenario C – *Wilson, National Union of Journalists and the National Union of Journalists, Palmer, Wyeth and the National Union of Rail, Maritime and Transport Workers, Doolan and others v. The United Kingdom*, (Apps. 30668/96, 30671/96 and 30678/96), Judgment of 2 July 2002

Article 12:

Scenario A – *Christine Goodwin v. United Kingdom*, (App. 28957/95), Judgment of 11 July 2002

Scenario B – *F. v. Switzerland*, (App. 11329/85), Judgment of 18 December 1987

Scenario C – *B. and L. v. United Kingdom* (App. 36536/02), Judgment of 13 September 2005

Article 14:

Scenario A – *Camp and Bourimi v. The Netherlands* (App. 28369/95), Judgment of 3 October 2000

Scenario B – *S.L. v. Austria* (App. 45330/99), Judgment of 9 January 2003

Scenario C – *Thlimmenos v. Greece*, (App. 34369/97) Judgment of 6 April 2000

Protocol 1, Article 1:

Scenario A – *Stretch v. United Kingdom*, (App. 44277/98), Judgment of 24 June 2003

Scenario B – *Nerva v. United Kingdom* (App. 42295/98), Judgment of 24 September 2002

Scenario C – *Air Canada v. United Kingdom*, (App. 18465/91), Judgment of 5 May 1995

Protocol 1, Article 2:

Scenario A – *Valsamis v. Greece*, (App. 21787/93) Judgment of 18 December 1996

Scenario B – *Cyprus v. Turkey*, (App. 25781/94), Judgment of 10 May 2001

Scenario C – *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, (Apps. 5095/71, 5920/72 and 5926/72), Judgment of 7 December 1976

Protocol 1, Article 3

Scenario A – *Hirst v. The United Kingdom* (No. 2), (App. 74025/01), Judgment of 6 October 2005

Scenario B – *Matthews v. The United Kingdom*, (App. 24833/94), Judgment of 18 February 1999

Scenario C – *Gitonas and Others v. Greece*, (Apps. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95), Judgment of 1 July 1997

Relevant Organisations and contacts

The Northern Ireland Human Rights
Commission
Temple Court
39 North St
Belfast
BT1 1NA

TEL: (028) 90 243987

EMAIL: information@nihrc.org

Office of First and Deputy First Minister
Equality and Human Rights Unit
Room E3.04
Castle Buildings
Stormont Estate

TEL: (028 90 522560

EMAIL: info@humanrightsni.gov.uk

Department for Constitutional Affairs
Selborne House
54-60 Victoria Street
London

TEL: (02072108892

EMAIL: humanrights@dca.gsi.gov.uk

Glossary

According to the law:

There must be a law which allows for a particular restriction of a right. It must have a basis in national law, be accessible and have foreseeable consequences.

Articles:

The Convention is divided up into Articles. Each of the Articles from 2 -12 and Article 14 detail a different human right or freedom. Other Articles of the Convention deal with procedural issues. Each of the Protocols are also divided up into Articles.

Convention Rights:

The rights and freedoms set out in the European Convention on Human Rights.

Derogation:

A reservation or limitation that can be attached to certain Convention rights.

Human Rights Act:

The Human Rights Act 1998.

Margin of Appreciation:

The degree of discretion allowed to the state when interpreting and applying Convention rights.

Positive Obligation:

An obligation which is read into the text of an Article which requires a state to take action, rather than simply refrain from interfering with a right.

Prescribed by law:

There must be a law which allows for a particular restriction of a right. It must have a basis in national law, be accessible and have foreseeable consequences.

Proportionality:

When taking decisions which may affect an individual's rights, a public authority must make sure that it tries to interfere with the right as little as possible. Any interference must be proportionate to the aim which the public authority wants to achieve.

Protocol:

"Protocols" are additions or amendments to the Convention made after the original Convention was signed. They may be signed and ratified by parties to the Convention and are effective as if they were part of the original Convention. However not all Protocols have been signed by the UK.

Public Authority:

There is no list in the Human Rights Act of which bodies are considered public authorities. However Government Departments, their Agencies and NDPB's, Courts, Prison Services, Police Services and Local Authorities are recognised as Public Authorities for the purposes of the Act. Those contracted to carry out a public service are often recognised as public authorities for the purposes of the Act.

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The Act:

The Human Rights Act 1998.

The Convention:

The European Convention on Human Rights.

Victim:

A victim is someone who is directly affected by an act or an omission of a public body. A relative can also be a victim where a complaint is made after death. A victim may also be a person who is at risk of being directly affected by a measure.



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**The Equality and
Human Rights Unit,
OFMDFM**

Tel: 028 9052 3144

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