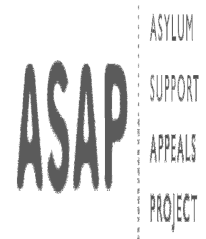


THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE HUMAN RIGHTS ACT 1998



This document is designed to give an overview of the European Convention on Human Rights (ECHR) and the Human Rights Act 1998. It should not be taken as a basis for providing legal advice. If considering whether a breach of human rights has occurred, further advice should be sought from an appropriately qualified legal adviser.

Although this document gives a general overview of the ECHR and the Human Rights Act 1998 it does, where possible, focus on the relevancy of both to asylum seekers.

Introduction

The ECHR is an international agreement between several countries, including the UK. It is a document which contains details of the rights and freedoms individuals are entitled to have protected. These rights are listed in the ECHR as “articles” and referred to as the “Convention rights”.

The Human Rights Act 1998 makes the rights listed in the ECHR enforceable in national courts. This means that a person whose Convention rights have been breached can get a remedy in their national courts. Before the Human Rights Act was introduced, cases involving breach of Convention rights had to be heard in the European Court of Human Rights in Strasbourg.

The Human Rights Act requires all legislation to be, as far as possible, compatible with the ECHR. When new legislation is passed, Parliament must confirm that it is compatible with the ECHR. In very limited circumstances, for example in times of national emergency, Parliament can decide that it is in the interests of justice or, for example, public safety, to allow certain Convention rights to be breached. This is known as “derogating” from the ECHR.

The Human Rights Act also requires “public authorities” to perform their duties in accordance with the ECHR and makes it unlawful for them to do otherwise. A public authority (or public body) is one which makes decisions that affect the public. Examples of public bodies include; the Home Office, the Immigration Appeals tribunal and the Asylum Support Tribunal (AST) and all other courts and tribunals. When making decisions that will have an effect on the public, a public body must consider the Convention rights of the individual(s) concerned. So, for example, if BIA decide to withdraw support from an asylum seeker they should first consider whether to do so would lead to a breach of his/her Convention rights.

FACTSHEET:9

12/04/07

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The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact the ASAP.

Types of Rights Protected in the ECHR

Despite the ECHR giving individuals protection from having their fundamental human rights breached, certain rights can be interfered with in certain circumstances and for this reason the Convention rights are divided into 3 categories: absolute rights, limited rights and qualified rights.

Absolute rights are rights that cannot be interfered with for any reason.

Limited rights are rights which can be interfered with for reasons which are stated in the ECHR explicitly. For example, whilst everyone may have the right to liberty (Article 5 – see specific Article information below) it is not a breach of a Convention right to imprison a person who has been found guilty of a crime and tried and sentenced lawfully.

Qualified rights are rights which can be interfered with for reasons such as; the protection of the rights of others, in the interest of public safety, the economic well-being of the country, the prevention of crime and disorder and the protection of public health and morals. Any interference with qualified rights must be justified and proportional. This means there must be a good reason for interfering with an individual's Convention rights and that interference must not be excessive.

Everybody residing in the UK, including asylum seekers, is protected by the ECHR.

The ECHR Rights

Article 2 – The right to life

A person has the absolute right to have their life protected by law. Only in very limited circumstances can the state take away a person's life (for example in a country where the death penalty exists lawful enforcement of it does not constitute a breach of Article 2).

Article 3 – Protection from torture or inhuman or degrading treatment.

This is an absolute right and cannot be interfered with by the State under any circumstances.

Not all "treatment" that appears to be inhuman or degrading will lead to a breach of Article 3. The type of treatment which will lead to a breach of Article 3 was defined in a case called *Pretty v United Kingdom*, a case which was heard at the European Court of Human Rights. (The case concerned a woman suffering from a terminal illness who wished to be able to commit suicide with the assistance of her husband and wanted the courts to rule that her husband would not be prosecuted for doing so.)

Pretty v United Kingdom defined "ill-treatment" as treatment which involves actually bodily injury or intense physical or mental suffering. Degrading treatment amounting to a breach of Article 3 was defined as treatment which humiliates or debases an individual's human dignity.

The leading case regarding asylum and Article 3 concerned asylum support. *R(Limbuela) v Secretary of State for the Home Department*. The asylum

seeker had been refused support under Section 55 of the Immigration and Asylum Act 2002 because he was thought to have failed to claim asylum “as soon as reasonably practical” on entering the UK. In this case the asylum seeker had spent two nights in July sleeping rough in a park. He was humiliated by having to beg for money to buy food and was in some pain. There was no accommodation available to him. The court held that if a person has tried to access assistance but there is none available and as a result has to beg for food and sleep rough this is likely to constitute degrading and inhuman treatment and breach Article 3.

Article 4 – Freedom from slavery or forced labour

This is also an absolute right and cannot be interfered with under any circumstances.

Section 10 of the Asylum and Immigration (Treatment of Claimants) Act 2004 allows BIA to make the provision of Section 4 support conditional on the individual performing community activities. Community activities are activities which the Secretary of State regards as beneficial to the public. Although this provision is not currently in force, if it were to be it could *possibly* be considered to be a breach of Article 4 as participating in community activities would be compulsory (or forced) under the threat of removal of support.

Article 5 - The right to liberty and security of the person

This right is a limited right. A person has a right not to be deprived of their liberty even for a short period unless this is lawful (for example following a lawful arrest or conviction for a crime).

Detention of persons seeking asylum who have not committed a crime or been charged with an offence *could* be regarded as an interference with Article 5 unless it is permitted by law (for example to facilitate deportation).

Article 6 – The right to a fair trial

This is a limited right. Everyone has the right to a fair trial this includes the right to a fair and public hearing before an independent and impartial tribunal within a reasonable time.

Article 7 – No punishment without law

This is an absolute right. It means that a person has a right not to be prosecuted for a criminal offence retrospectively. In other words if a person’s actions were not unlawful when they carried them out, should such actions become unlawful that person cannot then be prosecuted.

Article 8 – The right to private and family life

This is a qualified right and any interference with a person’s right to live a private life with their family must be justified.

For example, if a homeless family approached Social Services for support. Social Services would have a duty to accommodate any children under 18 but only a power to accommodate the parents. It could be argued that Social

Services should accommodate the whole family as to separate them would breach Article 8.

Article 9 – Freedom of Religious Belief

Article 9 protects a person's rights in relation to faith in a particular religion.

Article 10 – Freedom of Expression

Article 10 is a qualified right and can be interfered with by the state if it is proportionate and justified.

Article 11 – Freedom of assembly and association

Article 11 is the right to free assembly and association and is a qualified right.

Article 14 – Freedom from discrimination

Although Article 14 protects the right not to be discriminated against this is a different kind of right in that it is not "free standing". This means that a claim under Article 14 can only be used in conjunction with a claim for a breach of another Convention right. This Article does not, therefore, protect individuals from being discriminated against in all areas of their lives, only in relation to Convention rights.

For example, anti terrorist legislation following the attacks on the World Trade Centre allowed suspected terrorists to be detained indefinitely without charge. Claims were brought under the Convention on the grounds that this measure breached Article 5, the right to liberty, and Article 6, the right to a fair trial. As this legislation only applied to foreign nationals, Article 14 could then be used as claims involved breaches of Convention rights that British nationals would not face.

Conclusion

It is likely that cases involving asylum support will focus on breaches of Article 3 and Article 8. It is often argued that forcing a person into destitution will lead to pain and suffering and that separating families would be an unreasonable interference with private family life. If advisors feel that there is a potential breach of Convention rights they should seek further advice from ASAP or a solicitor.

For more information and factsheets, visit www.asaproject.org.uk

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