



Human Rights and Criminal Justice

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Impact of ECHR on criminal justice

- Negative – may allow challenge of certain offences or exercise of powers
- Positive – may place positive obligations on state to investigate crime (Opuz v Turkey, domestic violence, 2009)
- Procedural



Six Impacts of European Court on Convention

- Living instrument (eg Tyrer, corporal punishment)
- Practical and effective rights (Artico, Airey)
- Autonomous meaning to terms (charge)
- Margin of appreciation (abortion)
- Clarity (in accordance with law, DPP guidance after Purdy)
- Extra Territoriality (Al Skeini)



Article 2

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- 1) In defence of any person from unlawful violence
- 2) In order to effect a lawful arrest or to prevent the escape of a person lawfully detailed
- 3) In action lawfully taken for the purpose of quelling a riot or insurrection



Article: right to life

Places a *positive* obligation on the state to take reasonable measures to protect life:

- Duty to put in place 'effective criminal law provisions to deter the commission of offences against the person, backed by law-enforcement machinery for the prevention, suppression, and sanctioning of breaches of such provisions' (Barrett v UK, drinking)
- Duty to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another (e.g. a restraining order, Osman, obsessed teacher)



Protocol 6 extends Article 2

Article 1 – abolition of the death penalty

Article 2 – death penalty in time of war



Article 3

No one shall be subjected to torture or to inhumane or degrading treatment or punishment

Development of universal jurisdiction

Pinochet

Zardad

AG consent

Tzipi Livni



Article 4

No one shall be held in slavery or servitude

No one shall be required to perform forced or compulsory labour

For the purpose of this article the term 'forced or compulsory labour shall not include

- Any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention
- Any service of military character or, in the case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service
- Any service exacted in case of emergency or calamity threatening the life or well-being of the community
- Any work or service which forms part of normal civic obligations.



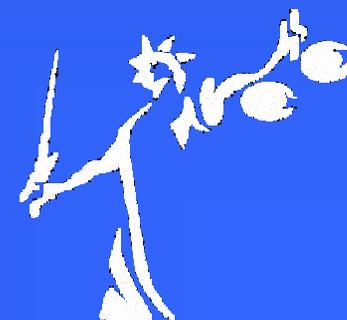
Sex trafficking: the advance of criminalisation

Nationality Immigration and Asylum Act 2002 made trafficking of people for prostitution illegal

Sexual Offences Act 2003 criminalised all forms of sexual exploitation

Asylum and Immigration Act (Treatment of Claimants) Act 2004 further criminalised trafficking)

2005 Council of Europe Convention on Action against Trafficking – reflection and recovery, temporary residence, specialist support



Article 5

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- Lawful detention of a person after conviction by a competent court
- Lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law
- Lawful arrest or detention effected to bring the person before the competent legal authority or when it is reasonably considered necessary to prevent his committing an offence or fleeing
- Detention of a minor by lawful order for the purpose of educational supervision or his lawful detention to bring him before the competent legal authority
- Lawful detention of persons to prevent the spreading of disease; persons of unsound mind, alcoholics or drug addicts or vagrants
- Lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country, or of a person against whom action is being taken with a view to deportation or extradition



Article 5 cont

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him

Everyone arrested or detained ... shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful

Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation



Article 6

6(1) In determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, here the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.



Article 6 cont

6(2) Presumption of evidence

6(3) specific rights in criminal cases



Article 7

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations

(Welch v UK – timing of confiscation orders, SW v UK and C v UK marital rape, effect of HL case)



Article 8

Everyone has the right to respect for his private and family life, his home and his correspondence

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

Surveillance – RIPA, interception of prison correspondence to solicitor, *Campbell v UK*



Article 9

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice, and observance

Freedom to manifest one's religion or beliefs shall be subject to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others

Conscientious objectors



Article 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The boundary between expression and incitement – Salima Malik, the lyrical terrorist.



Article 11

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are *necessary* in a democratic society

- In the interests of national security or public safety,
- For the prevention of disorder or crime,
- For the protection of health or morals, or
- For the protection of the rights and freedoms of others.
- This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police, or of the administration of the State.



Article 11

S132 Serious Organised Crime and Police Act
2005

Maya Evans

Mark Thomas



Article 12

Men and women of 'marriageable' age have the right to marry and to found a family, according to the national laws governing the exercise of this right

No right to conjugal visits in prison X and Y v Switzerland



Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

This right is not free-standing

- Requires that the facts in issue 'fall within the ambit' of one or more of the Convention provisions (no violation necessary)



Article 14

Is there different treatment?

Does the treatment have a legitimate aim?

Are the means proportionate?

Belmarsh case

S44 Terrorism Act – unintended consequences

