

European Convention on Human Rights (ECHR)

Article 15 Derogation in time of emergency

- 1 In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations to the extent strictly required by the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 The following articles can never be derogated from: Article 2, except in respect of deaths resulting from lawful acts of war, Article 3, Article 4 (paragraph 1) and Article 7. ...

Article 1 Obligation to respect human rights

Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 14 Prohibition of discrimination

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.

Absolute rights

Rights which must always be **recognized**.

States must always respect these rights, even in emergencies.

Article 2 Right to life

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of their life intentionally save in the execution of a sentence of a court following their conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention to this article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.

Article 7 No punishment without a crime

- 1 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.
- 2 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.

Limited rights

These rights are **not absolute**.

Some rights are stated with a list of detailed exceptions (e.g. Arts 4, 5, 6). Other rights are limited by the rights and freedoms of others and in the interests of public safety, etc. (e.g. Arts 8, 9, 10, 11).

Article 4

- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term 'forced or compulsory labour' shall not include:
 - (a) work required to be done during detention imposed under Article 5;
 - (b) service of a military character;
 - (c) service exacted in case of emergency threatening the life or well-being of the community;
 - (d) work or service which forms part of normal civic obligations.

Article 5 Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of their liberty save in the following cases and in accordance with the law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing them before the competent legal authority;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or for the purpose of bringing the minor before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in language which they understand, of the reasons for this arrest and of any charge.
- 3 Everyone arrested or detained in accordance with this provision shall be brought promptly before a judge or other officer authorized by law to exercise judicial power 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.
- 4 Everyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of their detention shall be decided speedily by a court and their release ordered if the detention is not lawful.
- 5 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 Right to a fair trial

- 1 Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in language which they understand and in detail, of the nature and cause of the charge;
 - (b) to have adequate time and facilities for the preparation of a defence;
 - (c) to defend themselves in person or through legal assistance of their own choosing or, if insufficient means to pay for legal assistance, to be given it free when the interests of justice so require. ...

Article 8 Right to respect for private and family life

- 1 Everyone has the right to respect for their private and family life, home and correspondence.
- 2 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.

Article 9 Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change their religion or belief and freedom, either alone or in community with others and in public or private, to manifest their religion or belief, in worship, teaching, practice and observance.
- 2 This shall be subject only 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.

Article 10 Freedom of expression

- 1 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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms 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.

Article 11 Freedom of assembly and association

- 1 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 their interests.
- 2 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.

Article 12 Right to marry

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.

Protocol 1, Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol 1, Article 2 Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Definition of terms

Contracting Parties: States that are signatories to the Convention

Derogation: suspension or restriction of a right

Protocols: these have the effect of adding new Articles to the ECHR.

Public authorities: these include the courts and any other person whose functions include those of a public nature (e.g. local authorities). It excludes the Houses of Parliament and any person exercising functions in connection with parliamentary proceedings.

Article 13 Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Remedies under the Human Rights Act 1998

Article 13 of the ECHR provides that everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy. While the Human Rights Act (HRA) 1998 has not incorporated Article 13 it provides its own remedies for breaches of the rights contained in the ECHR.

Section 8(1) of the HRA 1998 authorizes a court, which finds that an act of a public authority is unlawful, to 'make such order, within its powers as it considers just and appropriate'.

The remedies available include damages, declarations, injunctions and/or judicial review.

Further, if the higher courts are unable to interpret legislation in a way that is compatible with the provisions of the ECHR they can make a 'declaration of incompatibility'. Taking action to secure compliance with the provisions of the ECHR will then be a matter for the government.