

W201 The Individual and the State

Study notes on civil liberties: a comparison of English law and Articles 2 3 and 4

The course requires

- an understanding of civil liberties law in England and Wales and
- an ability to compare English law with Convention rights.

1 The right to life

English law

There is no general statement of this right anywhere in English law but by examining specific provisions we can discover how the right to life is protected.

The death penalty has been abolished in England as a judicial punishment. Issues can still arise with abortion and euthanasia. (Ie the right of the unborn child to life and the right of the elderly person to life despite any wish to hasten death.)

Euthanasia would be a criminal offence in England (murder).

Abortion is permitted in England in limited circumstances under the Abortion Act 1967.

The High Court in England has considered whether the withdrawal of medical treatment from a patient in a coma (as was permitted in **Airedale Hospital Trustees v Bland** 1993 Lords) is in breach of the Convention. The Court held that there was no breach if a court decided a patient should be allowed 'to die with dignity'.

Convention

Article 2

Everyone's right to life shall be protected by law.

The Convention does not ban the death penalty but if a state chooses to adopt Protocol 6 this would do so. The UK has adopted Protocol 6.

There has been no reported case on euthanasia under the Convention.

In **Pretty v UK** 2002 ECHR the Court held that the right to life did not entail the right to have another assist in one's suicide. (Diane Pretty due to her extreme medical condition was unable to take her own life although she wished to do so).

In **Paton v UK** 1980 the view was taken that protection of the person begins at birth which would mean that abortion is not at present in contravention of this Article. The

ECHR has subsequently modified its stance in **Evans v UK** 2008 by deciding that in the absence of Europe wide consensus the decision on when the right to life begins is within the margin of appreciation of each state.

Article 2. 2 goes on to allow deprivation of life in self defence in lawful arrest or to quell riot or insurrection if the force used is no more than absolutely necessary. Shooting three suspected terrorists in Gibraltar was found to be 'more than absolutely necessary' in **McCann v UK** 1995.

2 Freedom from torture

English law

There is no general statement of this right in English law and any protection is afforded for example by the law of assault.

Convention

Article 3

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

In **Ireland v UK** 1978 there was a finding of inhuman and degrading treatment when alleged terrorists interned under special powers were interrogated using hooding, wall standing, noise intrusion, and sleep food and water deprivation. There was no finding of torture in this case the distinction being a matter of degree.

Corporal punishment was considered in **Tyrer v UK** 1978 where birching as a court sentence in the Isle of Man was found to be degrading where the offender had had to undress to be punished. The court indicated that it was a matter of degree and corporal punishment did not automatically constitute degrading treatment.

In **Chahal v UK** 1997 ECHR the government proposed to deport a Sikh to India where he feared torture. The Court found a breach of Article 3. In **D v UK** 1997 ECHR the UK proposed to send a convicted drug trafficker from prison in the UK to St Kitts despite his ill health and a life expectancy of eight to twelve months. This was inhuman treatment.

In the Bulger case in **T v UK** and **V v UK** 1999 ECHR a challenge to the sentences of detention at her Majesty's pleasure on the basis that the length of the punitive element in the tariff sentences for murder were inhuman and degrading treatment failed. The Court recognised that the state had a duty to protect the public from violent crime.

3 Freedom from slavery

This basic right set out in Article 4 has not given rise to much serious legal challenge.