

Human rights act

Law



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This essay will assess if articles 8 to 11 of the European Convention on Human Rights allows the state too much freedom to interfere with their rights. It will do this by describing the Qualified, Absolute, and Limited Rights, and will then discuss Articles 8, in regards to the right for a private life, and Article 10, in view of the right to freedom of expression. It will then sum up whether or not the European Convention on Human Rights does or does not allow the state too much latitude to interfere. In 1950, representatives of all the Member States of the Council of Europe signed the European Convention on Human Rights.

It was argued that collective security in human rights was as necessary as its military counterpart for the promotion and defence of " individual freedom, political liberty and the rule of law. " 1 The European Convention on Human Rights still remains, a result of its time and the worry of those who drafted it. As the European Convention on Human Rights was signed shortly after Second World War and during Cold War, the rights naturally were ways of protection for predominantly civil and political rights, as opposed to social or economic.

Clear examples of the kind of rights protected by the European Convention on Human Rights include the right to freedom of expression, which is included in Article 10. The European Convention on Human Rights articles are put into three different categories. These are Absolute Rights, Limited Rights and Qualified Rights. These terms do not give specific categories, but are there in order to understand the structure of the Convention rights.

Article 3 (Protection from torture), are Absolute right. This is because in no case can torture be performed in the interest of the state.

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There is no balancing of the rights against public interest (Chahal v United Kingdom²). Many of the core rights are subject to limitations and qualifications. Limited rights are protected under Protocol 1, Article 2 (Right to an education), Article 4(2) and (3) (Prohibition on forced labour), Article 5 (Right to liberty and security of the person), Article 7 (No punishment without Law), and Article 12 (Right to marry), and they can be restricted under explicit and finite rules. ³ Limited rights set out the content of the right at the beginning of the article, and indicate the precise restrictions on its scope.

Limitations here are only meant to be interpreted in a narrow sense, because if applied in a wide interpretation it would 'entail consequences incompatible with the notion of the rule of law from which the whole Convention draws its inspiration'⁴ Qualified rights are protected in Protocol 1 Article 1 (Right to peaceful enjoyment of possessions), Article 8 (The right to respect for private life), Article 9 (in so far as it relates to manifestation of religious beliefs), Article 10 (the right to freedom of expression), and Article 11 (Freedom of assembly and association).

Qualified rights are the rights which have a tendency to raise the most apparent conflict with the interest of society or the rights of others. Qualified rights are placed into two parts in the Convention. The first lays down the substantive right, and the second then goes on to qualify it. This is clearly shown in Article 8 which states that everyone has the right to respect for his private and family life, his home and his correspondence. To respect for, means that it is a qualified right, not an absolute right. A quality right has a lower threshold.

The above is sub section 1, which lays down the presumed right. Therefore, Article 8(2) goes on to qualify this, by stating 'a public authority will not interfere with the exercise of this right except where it is in accordance with the law and is necessary in a democratic society.'⁵ For example in cases of public safety, prevention of crime or disorder, and the protection of the rights and freedom of others. This shows that the limitations to article 8 are extremely broad, and are what makes this a qualified right. Conversely there will be a major problem with regards to police surveillance, and, entrapment.

Surveillance by those policing bodies on that citizen as well as in entering the citizen's premises to search the premises is where state policing agencies and the citizen are expected to clash (Through the use of article 8) . The Convention maintain that the law must recommend any actions by the police, following article 8(2) under the phrase 'in accordance with the law'. In the case of *Klass v Germany* ⁶, the European Court stated the principles for this requirement under the Convention as, firstly any power placed in the police to carry out secret surveillance must have a proper basis in law.

Secondly the law must be accessible to the citizen, and in addition the rules governing police surveillance must be clear enough to enable citizens to understand them and regulate their conduct accordingly. In *Klass* the Court accepted that police surveillance was a 'necessary evil in modern society' but also that this did not mean that there was 'unlimited discretion to subject persons within their jurisdiction to secret surveillance'. The Court said that these procedures could undermine or destroy democracy.

The case of *Perry v UK 7* is a typical case of the state adopting means they deem appropriate. The police had arranged a CCTV camera in order to identify a man that they wanted. The European Convention on the Human Rights found this to be a violation of the Police's actions, under Article 8, and the Police's actions were deemed unlawful. The state's action must have a proper basis in law, so although the police's actions were correctly followed, they were under the Home Office policies and not under the law.

Thus the state introduced legislation to envelop actions of the police, in particular under surveillance, entry, search and seizure and in the obtaining of evidence of identity. Proportionality is the finding of a fair balance between the rights of the individual, and the rights of the community, and where the action is proportionate to the legitimate aim pursued. When the judiciary apply the Convention, they try to balance the rights of the individual with the rights of the community, however the results of this can seem as though the needs of many outweigh the needs of the view.

Overt surveillance covers surveillance in a public place, such as CCTV. The European Convention on Human Rights holds that when the individual enters the public they lose the right to respect for privacy, for example events like demonstrations. Article 8(2) limitations would cover the police action concerning proportionality, and would cover the limitations on the policing actions on public safety, and prevention of crime and disorder.

In this area, it can be argued that the European Convention on Human Rights do not have enough freedom to interfere because there are too many limitations set out, and so they may be prevented from acting in order to

prevent a crime, because it may be seen as the state adopting means that they deem appropriate. Covert Surveillance is an area of policing where there are more issues of incompatibility with the Convention. The activity is controlled by an act prescribed by law, and not the Home Office.

In the case of *Malone v UK*, a suspected handler of stolen goods had his phone taped, under guidelines from the Home Office. However the European Court held that this was not an act prescribed by law and that article 8 was violated. As the use of mobiles and, cordless phones increased, the Act needed updating. In *R v Effick*, the House of Lords held that the Act does not apply to cordless telephones, even though it is a landline to the main part of the equipment, once the handset is picked up it is deemed to be a radio signal.

This shows a good balance of freedom, in that the European Convention on Human Rights found a loophole, and deemed it necessary to interfere. Article 8 and 10 interferences with the rights of the freedom they include have been shown to be legally justified within the terms of the articles themselves and to be proportional. An interference with private life must be shown to serve one of the legitimate objectives recognised in Article 8(2), and to be necessary and proportionate. The necessity and proportionality will be judged on whether a "strong and pressing social need" for the interference can be demonstrated.

Article 10(1) states that 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. Article 10(2) goes on to state that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as prescribed by law and are necessary in a democratic society

In the case of *Handyside v United Kingdom*¹⁰, the applicant was charged under the Obscene Publications Acts 1959 and 1964 for 'having in his possession obscene books entitled *The Little Red Schoolbook* for publication for gain'. Copies of the book were seized, forfeited and later destroyed, as was the book's matrix. The applicant was fined £50 and ordered to pay costs. The book was published elsewhere in Europe and circulated in some parts of the United Kingdom without prosecution. This led to the applicant publishing a new edition of the book, and there were no more criminal dealings.

The applicant alleged in his application to the commission that he breached Article 10. The Commission declared it was admissible that the complaints under Article 10 of the Convention. The Commission, concluded that there had been no breach of Article 10. Therefore in this case it seems that it was an advantage that the state had some latitude because it allowed them to protect the morals of the children. In conclusion it can be argued that the state more often than not has too little latitude in their qualification to interfere with those rights, however in some cases it seems to get the balance correct.

A clear case of where not enough latitude is shown is in Article 8, in the case of *Perry v UK* as in this case it can be argued that the state did not have

enough latitude, as they acted to what they deemed appropriately in identifying a man through the use of CCTV. However in contrast, in the case of *Handyside v United Kingdom*, it can be argued that the state was given a good balance of freedom because it allowed them to interfere in order to protect the morals of the children.

Alternatively, in the case of *Malone v UK*, it can be argued that not enough latitude was given to the state as they were deemed to have violated article 8 because their actions were not prescribed by the law, despite them acting in order to catch a suspected thief. In one case, *R v Effick*, it can be argued that too much latitude was given to the state because they held that an act does not apply to cordless phones because it was deemed to be a radio signal. But this can also be argued to have shown a good striking of balance of latitude because it adjusted the law according to the developments of electronics over time.