

# Breach of personal civil liberties and security law constitutional administrative...

[Law](#)



DETAINEES The plight of many immigrants and asylum seekers detained indefinitely in the United Kingdom awaiting deportation from the United Kingdom remain in limbo, because these individuals do not know when they would be freed or even removed. The indefinitely detention of the failed immigrants, asylum seekers has raised sustained international criticism of the policy by United Kingdom government[1]. Indefinite detention of people without trial is violation of their human rights and liberties[2]. IRC LTD will have to take into consideration the human rights of asylum and illegal immigration detained and their fundamental freedoms under European convention on human rights[3]. The power to detain is laid down in schs 2 and 3 of the Immigration Act 1971[4] as amended by the numerous of immigration legislation enacted. Those liable to removal are illegal entrants, over-stayers and those who breach their conditions of leave. may be detained under the rule schedule 2, paragraph 16(2) of the 1971 Act[5], order the detention of that person either pending a decision to remove or until removal . Under s 62(1) of the Nationality Immigration and Asylum Act 2002[6], the Secretary of State has number of powers he /she can exercise. Paragraph 2 of sch 3 to the 1971 Act allows for detention prior to deportation[7]. Either the Secretary of State or a court of law is empowered to detain a person pending the making of a deportation order, or once that order has been made. A person will be subject to deportation (and hence detention) where the Secretary of State deems it to be conducive to the public good; a member of their family is subject to a deportation order; or a court has recommended deportation following that persons conviction of a criminal offence[8]. Home Office policy on detention is that it should be used

cautiously and for the shortest period necessary. Where detention is auxiliary to removal it should only be used with a view to having that person removed[9]. All reasonable alternatives to detention should be considered first. There is no exhaustive list of factors thought to justify a decision to detain. There are three main reasons that may warrant person's detention, (i) a chance that the person can be removed quickly; (ii) a risk that they will abscond; and (iii) any risk that they would commit an offence or pose harm to the public[10].

## **Detention under article 5 European convention on Human Rights**

Article 5 provides that everyone has the right to liberty and security[11]. The right set out by Article 5(1) is limited, which means there are some circumstances set out in the Article and in domestic law, in which deprivation of liberty is lawful[12]. Any such deprivation of liberty must be necessary and proportionate and should not prolong for longer than necessary. It must also be in accordance with the relevant provisions of Article 5(2) to 5(5)[13].

Protection from arbitrary detention has been part of Britain's common law framework since the 13th century[14]. Today, the circumstances in which arrest and/or detention are permitted are set out in a number of Acts of Parliament and associated Codes of Practice.[15]The introduction of Human Rights Act 1998,. The legality of any deprivation of liberty may be reviewed and challenged through the domestic courts. Britain has also ratified a number of international treaties supporting the right to liberty and security[16]. At common law the statutory powers the home secretary was empowered to use was first used in the in famous case R( Hardial Singh) v

government of Durham prison[17]. And confirmed in case of Walumba Lumba & Kadian Mighty v Secretary of State for the Home Department[18]. Singh was an Indian national detained upon the completion of a prison sentence for some six months while the Home Office made attempts to deport him. Although Singh was happy to return to India, his removal was not effected as amongst other reasons[19] Indian High Commission were not forthcoming with a travel document for him. Holding that his continued detention under para 2 of sch 3 to the 1971 Act was unlawful, Woolf J. said: "Although the power which is given to the Secretary of State in paragraph 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that it is subject to limitations. First of all, it can only authorize detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Secondly, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being impliedly limited to a period which is reasonably necessary for that purpose. The period which is reasonable will depend upon the circumstances of the particular case. What is more, if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to exercise his power of detention.[20]"

## **Breach of personal civil liberties and security**

In a case where detention has not falling in one of the reasons set out in Article 5, it means a breach of the convention It was held by the European Court of Human Rights in *A v United Kingdom*[21]that some of the applicants had suffered breaches of Article 5(1) and 5(2). The UK had discriminated unjustifiably between national and non-national terror suspects, and that the measures adopted were disproportionate[22]. The Special Advocate procedure was justified, but that the suspect must be given specific details sufficient to mount a defense. Article 5(4) 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 his detention is not lawful[23]. 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[24]. In *Stickley v Moj and HMCS*[25], the victim was awarded £8500 for 57 days unlawful detention and a breach of article 5(1) of European convention on human rights. ., In *R (on the application of Al-Jedda) v. Secretary of State for Defense*[26]this case concerned A, who had been born in Iraq, and had been granted asylum in the UK and was later granted British nationality. He had travelled to Iraq in 2004 and was detained by British armed forces on suspicion of terrorist activities and argued his detention breached his rights under Article 5 of the ECHR 1950. But in this case however it was held refusing a claim for judicial review and rights under the Human Rights Act 1998 were capable of being overridden by a UN Security Council Resolution 1546 to detain A that overrode the UK's obligation under Article 5 to the extent permitted by the

resolution as a reflection of the circumstances at the time - i. e. the fear of terrorist attack

## **Detention under Article 3 of the European convention on human rights**

Article 3 of the convention states that no one shall be subjected to torture or inhuman or degrading treatment or punishment[27]Article 3 is an absolute right , which means it provide absolute protection against which amount to torture , or inhuman or degrading treatment with no limitations[28]Article 3 not only imposes a duty on the state not to subject you to torture, or inhuman or degrading treatment, but also imposes some positive obligations to prevent you suffering such treatment. The most important of these obligations is the requirement that you should not be expelled to a country where you are likely to be tortured or where there will be inadequate protection against persecution. In cases for example *Chahal v United Kingdom*[29], *Dashmir Koci v Secretary of State for the Home Department*[30]The United Kingdom (UK), like many other states, has been the subject of comment and criticism concerning certain aspects of its use of immigration detention. Most recently, a High Court Judge ruled that an immigration detainee suffered detention constituting inhuman and degrading treatment under Article 3 ECHR.[31]In addition, the use of accelerated examination procedures in the context of asylum has attracted criticism relating to concerns that the proceedings are been treated fairly[32]. Moreover, there is evidence that the indicative timescales for the fast track processes are often are not fit for purpose, leaving immigrants to languish in detention for months and sometimes years[33]In recent years, a variety of

studies have been undertaken regarding various aspects of immigration detention, which highlight its significance and the pressing need to develop strong principles in this area[34]. Detention Action, a UK-based advocacy body published a study on the detention of asylum-seekers, which provided an overview and critique of the use of the Detained[35]. Fast Track procedure in Harmondsworth Immigration Removal Centre and concluded that the DFT system is structured in such a way so as to disadvantage asylum-seekers at all stages of the process[36]. This fundamental breach of the detainee's human rights under article 3, 5 and possibly 9 of European convention on human rights[37]similar issues were examined by Human Rights Watch in 2010 as they relate to the detention of female asylum-seekers in the UK.[38]Medical Justice has published a collection of reports examining various aspects of detention as it relates to the health and medical care of detainees, the most recent are HIV patients who don't get the appropriate care and support they so need for treatment . In recent times a legal and mental health group of volunteers and pressure groups, wrote to Damian Green MP to express concerns at the lack of response to the three recent breaches on human rights in UK detention[39]. In the three cases, all of which involved the detention of men who were seriously mentally ill, the court found that the UKBA had detained these men unlawfully, and that their treatment breached Article 3 of the European Convention on Human Rights (Cruel, inhuman and degrading treatment[40]). To date the UKBA has not set out how it intends to improve the treatment of mentally unwell detainees in response to these serious findingsIt is indisputable fact that the detention of asylum seekers and undocumented

immigrants criminalizes them in the eyes of the public scrutiny . When it comes to conditions of detention, immigrants face even harsher treatment and more restrictions than those found guilty of criminal offence[41]. People with regard to the rights of detained immigrants are less regulated by law, which makes these people more vulnerable to arbitrary detention and other abuses.[42]State authorities use the administrative character of the measure as a pretext not to apply the procedural safeguards established for criminal detention. The report conducted by detention action a nonprofit organization found that the indefinite detention of migrants who cannot be deported is ineffective, inefficient and enormously damaging[43]. Only one in three people held in immigration detention for over a year are eventually deported. A full 57% of long-term detainees are released, having spent years in prison-like detention centers to no purpose. Detention in a high security immigration removal Centre costs the taxpayer over £68, 000 per person per year[44]. High levels of mental health problems and suicide attempts show the human cost of indefinite detention. An important example of derogation by the UK from the Convention relates to the detention of suspected terrorists in relation to the affairs of Northern Ireland. Here, the UK Parliament passed legislation enabling detention without charge for periods of up to five days, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland (under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act (1984)) . Following this legislation, the UK was subsequently found to be in breach of its Convention obligations in the case of Brogan and Others in which the Court ruled there had been a violation of Article 5(3), in respect of



the applicants who had been detained under Section 12 of the Prevention of Terrorism Act 1984[45]. Article 5(3) governs the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power upon arrest or detention. The Court held that even the shortest of four listed periods of detention under the Act, namely four days and six hours, fell outside permissible limits pursuant to Article 5(3)[46]. Moreover, there had been a violation of the applicants' rights under Article 5(5)[47] which provides that, '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'. The UK declared a state of 'public emergency' in relation to Article 15(1)[48], the derogation clause in the Convention after the adverse ruling in *Brogan*, and duly issued notification to the Council of Europe in accordance with Article 15(3)[49]. The derogation stated: 'There have been in the United Kingdom in recent years campaigns of organized terrorism connected with the affairs of Northern Ireland which have manifested themselves in activities which have included repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property. As a result, a public emergency within the meaning of Article 15(1) of the Convention exists in the United Kingdom.' The nature of the derogation relates directly to the adverse ruling, on the detention of suspects. The UK submitted that: 'The Government found it necessary in 1974 to introduce and since then, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of certain offences under the legislation, who have been detained

for 48 hours, to exercise powers enabling further detention without charge, for periods of up to five days, on the authority of the Secretary of State ...'Derogations are important because they restrict the rights of the individual, effectively eroding the right intended by the Convention, (as interpreted by the European Court of Human Rights in *Brogan v UK*[50]) and also they demonstrate the political power of the Member States when allowed to derogate from their responsibility. So, rights may be limited in their scope, according to the wishes of the Member State. However, like the first category of rights explored above, the rights in this group also cannot be qualified. They are absolute, so they retain some strength but states can derogate from their commitment to protect them which weakens their power to protect. They are more tentative, and dependent upon the prevalent contemporary social and political context. It was not until the Human Rights Act 1998 (HRA)[51] that legislation recognized as general legal right to religious freedom. Anti-discrimination provisions followed in 2003 and 2006 and today Britain's Equality Act 2010[52] prohibits discrimination because of religion or belief in connection with employment, vocational training, education, premises and the provision of services, and by public authorities and associations. The company is assigned to do job of private capacity but in public nature, the company must adhere to all the rules and regulations governing the breaches European convention on human rights, especially articles 3, 5 and maybe 9 in order to avoid compensation if breaches of the conventions and human rights of the detainees under their care are justified in the court of law. Word count 3008