



Use of force by police officers and prison officers– key human rights considerations

QUICK REFERENCE

Which Articles from the ECHR might I need to consider?

- Article 2 – Right to life
- Article 3 – Right not to be subject to torture, inhuman and degrading treatment or punishment
- Article 8 – Right to respect for private and family life

What is the relevant case law?

- McCann v UK (1995)
- Brady v UK (2001)
- Gul v Turkey (2002)
- Ergi v Turkey (1998)
- Gulec v Turkey (1999)
- A v UK (1998)
- Hurtado v Switzerland (1994)
- Ribitsch v Austria (1995)
- Tomasi v France (1992)

This guidance provides a summary of the key Human Rights Act considerations

General considerations

Police and Prison Officers* (who have the power of constables) may use reasonable force where necessary in the execution of their duties. The principal basis for this is section 3 of the Criminal Law Act 1967, which allows anybody to use reasonable force for the prevention of crime or to arrest suspected offenders or persons unlawfully at large, and section 117 of the Police and Criminal Evidence Act 1984, which allows constables to use reasonable force when exercising powers under that Act. Included in this is the use of particular techniques and devices (ranging from control and restraint techniques, up to and including the use of firearms by police

* This includes officers in contracted out services such as custody officers



officers). Of course, officers need to be properly trained in the use of any particular technique or device, including how to use them and the circumstances in which their use may be permissible.

Use of lethal force

Article 2 provides:

- (1) 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.*
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this Article where 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.*
- (3) 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.*
- (4) Deprivation of life shall not be regarded as inflicted in contravention of this Article where 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.*

Use of lethal force in self-defence, arrest, lawful detention and public order situations

Article 2(2) provides a number of legitimate outcomes which may justify the taking of a person's life under the ECHR. These are all of particular relevance to the police



(and to a lesser extent Prison Officers). These exceptions are exhaustive and are narrowly interpreted (ie. in favour of a person's right to life).

What is of key importance is that the police (or prison officers) may only use a level of force that is "no more than absolutely necessary" to achieve these legitimate outcomes. Force used must be strictly proportionate to the aim in question. This standard is stricter than that which requires force to be "reasonably justifiable". If the police (or prison officers) exceed that level of force that is strictly proportionate, they will violate a person's right to life.

- In *Gül v Turkey* (2002) the ECHR held that the firing of approximately 50 shots at the door of the deceased's flat during a search operation was not strictly necessary.
- The fact that a police officer is mistaken in his belief that the killing is necessary in self-defence does not prevent the use of force from being lawful. In *Brady v UK* (2001) the ECHR found there to be no violation because the police officer honestly believed it was necessary to shoot the innocent man, who was thought to be involved in an armed robbery, in self-defence.

The "strictly proportionate" test has implications for the planning of operations, the orders given to police officers and the resources provided to police officers. Even where at a particular moment in time it is necessary for a police officer to take a person's life to achieve one of the legitimate aims in Article 2(2), a State may be found to be in violation of the right to life where that scenario could have been avoided. Otherwise States would be able to reduce the protection afforded to the right to life by failing to train its police and to plan its operations adequately. For example:

- In *Gulec v Turkey* (1999) the ECHR held that there had been a breach of Article 2 when police fired guns into a crowd to disperse demonstrators. The unavailability of less forceful means of crowd control such as truncheons, riot shields, water cannon, rubber bullets or tear gas was considered to be "incomprehensible and unacceptable".
- In *McCann v UK* (1995) the ECHR considered the shooting of 3 suspected terrorists who were suspected of carrying a device capable of setting off a car bomb on the Island of Gibraltar. The ECHR found that because the suspects had been permitted to travel into Gibraltar, because inadequate consideration had been given to the fact that the intelligence might have been incorrect, and because recourse to lethal force at that point in the operation was automatic, the use of force was not strictly necessary for the purposes of Article 2.



- In *Ergi v Turkey* (1998) the ECHR considered whether the killing of a person during a terrorist-related ambush operation was strictly necessary. The ECHR found that because the State was unable to provide evidence on the planning and conduct of the operation it could reasonably infer that insufficient precautions had been taken to protect the lives of the civilian population.

Use of non-lethal force

Article 3 provides that:

“no one shall be subject to torture or to inhuman or degrading treatment or punishment”.

The prohibition is absolute. No exceptions are provided and no derogation from this right is permitted in time of public. Ill-treatment which is contrary to Article 3 is never justifiable, even where it serves the highest public interest.

Treatment must attain a minimum level of severity before there is a violation of Article 3. That minimum level is relative and will depend on all the circumstances of the case. The ECHR held in *A v UK* (1998) that “it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim”.

Use of force in effecting arrest, upholding public order, preventing escape, acting in self-defence

Allegations of ill-treatment violating this right often arise as a result of the use of force by police when they are effecting an arrest, upholding public order, preventing escape or acting in self-defence. In such cases, the ECtHR will consider whether the use of force was proportionate; if it is then no breach of article 3 will have occurred:

- In *Hurtado v Switzerland* (1994) the ECHR found on the specific facts of the case that a fractured rib and bruises inflicted when arresting a person was not disproportionate because the applicant arrested was a potentially violent suspected drug trafficker.

Use of force and/or assault during detention

This issue will arise where a Police or Prison Officer uses force in respect of a person in detention. In such cases, the ECHR will consider whether the use of force was in pursuance of a lawful objective and if the force used was proportionate, if it is then no breach of article 3 will have occurred. Where a person is taken into police (or prison)



custody in good health and sustains or is released with injuries, the State must provide a plausible explanation for the cause of those injuries.

- Force used during detention which is not made strictly necessary by a detainee's conduct is in principle an infringement of Article 3; *Ribitsch v Austria* (1995).
- In *Tomasi v France* (1992), the ECtHR found that the medical evidence of a large number of blows and the absence of an alternative explanation by the Government was sufficient to establish a violation of Article 3 by agents of the State.

Article 8 provides a:

right to respect for private and family life

“(1) Everyone has the right to respect for his private and family life, his home and his 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.”

This is one of a number of qualified rights in the Convention, whereby the general principle is set out in paragraph (1) and the grounds on which interference with the right can be justified are set out in paragraph (2). Key to the correct understanding of this right is appreciation of two points:

- any interference must be in accordance with the law. This requires the powers to interfere with the right to be lawful, set out in the law and accessible and foreseeable. Discretion is permissible but its scope must be set out clearly.
- any interference must be proportionate to the legitimate aim that is being pursued. This requires the consideration and use of other means of realising that legitimate aim that involve less interference with the person's rights.

Use of force



Article 8 has been held to encompass a person's physical integrity. Use of force by police or prison officers would therefore be covered by Article 8. While the threshold for a breach of Article 8 is lower than for a breach of Article 3, Article 8 provides for circumstances when it is legitimate to breach the person's Article 8 rights.

Any interference with this right should be in accordance with the law, necessary and proportionate, and covered by one of the reasons set out at article 8(2) above (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.)

If the use of force is in accordance with the law and necessary and proportionate, provided the use of force was for one of the reasons set out at Article 8(2) then there will be no breach of Article 8.

