ESSENTIAL HUMAN RIGHTS CASES

SECOND EDITION

Susan Nash, Barrister, Gray’s Inn

Mark Furse
PART 1  INTRODUCTION

Chapter 1  THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE UNITED KINGDOM  

1.1  INTRODUCTION  

1.2  THE COUNCIL OF EUROPE AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS  

1.3  RIGHTS AND FREEDOMS GUARANTEED UNDER THE CONVENTION AND ITS PROTOCOLS  

1.4  RESERVATION, DEROGATION AND RESTRICTION  

1.5  THE DOCTRINE OF THE MARGIN OF APPRECIATION AND THE PRINCIPLE OF PROPORTIONALITY  

1.6  THE ENFORCEMENT MACHINERY  

(1) Individual petition, admissibility criteria and third-party intervention  

(2) Friendly settlements, judgments, advisory opinions and just satisfaction  

1.7  SUBSTANTIVE RIGHTS AND FREEDOMS  

(1) Right to life: Article 2 and the Sixth Protocol  

(2) Freedom from torture, inhuman or degrading treatment or punishment: Article 3  

(3) Prohibition of slavery and forced labour: Article 4  

(4) Right to liberty and security: Article 5  

(5) Fair trial: Article 6 and Articles 2–4 of the Seventh Protocol  

(6) Freedom from retroactive criminal law: Article 7  

(7) Right to respect for private and family life: Article 8
(8) Freedom of thought, conscience and religion: Article 9 23
(9) Freedom of expression: Article 10 23
(10) Freedom of assembly and association: Article 11 25
(11) Right to marry: Article 12 26
(12) Right to an effective remedy: Article 13 26
(13) Freedom from discrimination: Article 14 26
(14) Right to peaceful enjoyment of property: Article 1 of First Protocol 27

1.8 THE HUMAN RIGHTS ACT 1998 27
(1) Obligations imposed by the Act 28
(2) Remedies 29
(3) Freedom of expression and freedom of religion 29
(4) Convention rights and Acts of Parliament 30

1.9 THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN UNION 31

Chapter 2 GENERAL PRINCIPLES OF THE CONVENTION AND GUARANTEES 35
2.1 MARGIN OF APPRECIATION 35
(1) Domestic authorities in best position to judge 35
   Rees v United Kingdom 35
   Tyrer v United Kingdom 35
   Ireland v United Kingdom 36
   Handyside v United Kingdom 36
   Stubbings and Others v United Kingdom 37
   Lack/presence of consensus 38
   X, Y and Z v United Kingdom 38
   Cossey v United Kingdom 38
   B v France 39
(2) Margin of appreciation as defining the scope of rights 39
   Mareckx v Belgium 39
   Abdulaziz, Cabales and Balkandali v United Kingdom 40
   Airey v Ireland 40
   Smith and Grady v United Kingdom 41
   United Kingdom cases 41
   R v DPP, ex parte Kebilene 41
   R v Stratford Justices, ex parte Imbert 42
   Brown v Stott 43

2.2 LIMITATIONS ON INTERFERENCE WITH CONVENTION RIGHTS BY THE STATE 44
(1) Strict limitations 44
   Fox, Campbell and Hartley v United Kingdom 44
   Campbell and Cosans v United Kingdom 44
   Guzzardi v Italy 45
   Lawless v Ireland (No 3) 45
(2) Implied limitations
Johnston v Ireland

(3) Proportionality and the balance between the
interests of the individual and of the community
Rees v United Kingdom
X, Y and Z v United Kingdom
Artico v Italy
The protection of a democratic society
Castells v Spain
Malone v United Kingdom
McCann v United Kingdom
Proportionality: goals achieved by other means?
Chahal v United Kingdom
Fair trial: judicial safeguards
McCann v United Kingdom
Klass and Others v Federal Republic of Germany

(4) Autonomous concepts — interpretation of
particular terms
Abdulaziz, Cabales and Balkandali v United
Kingdom
Engel v The Netherlands (No 1)

(5) Autonomous concepts — interpret Convention as a
whole
Abdulaziz, Cabales and Balkandali v United
Kingdom

2.3 THE CONVENTION AS A LIVING
INSTRUMENT

(1) Interpretation in the light of present-day
conditions
Tyrer v United Kingdom
Johnston v Ireland
Rees v United Kingdom
Marckx v Belgium
Dudgeon v United Kingdom
B v France
Cossey v United Kingdom
SW v United Kingdom and CR v United Kingdom

(2) Changing interpretations in the light of
subsequent practice
Soering v United Kingdom

(3) Rights not created
Johnston v Ireland

(4) Implied rights
Golder v United Kingdom

2.4 POSITIVE OBLIGATIONS OF THE STATE
Marckx v Belgium
Abdulaziz, Cabales and Balkandali v United
Kingdom
<table>
<thead>
<tr>
<th>Case Study</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soering v United Kingdom</td>
<td>62</td>
</tr>
<tr>
<td>Plattform 'Ärzte für das Leben' v Austria</td>
<td>62</td>
</tr>
<tr>
<td>Edwards v United Kingdom</td>
<td>63</td>
</tr>
<tr>
<td>Keenan v United Kingdom</td>
<td>64</td>
</tr>
<tr>
<td>Akkoc v Turkey</td>
<td>65</td>
</tr>
<tr>
<td>Burdov v Russia</td>
<td>66</td>
</tr>
<tr>
<td>Kilic v Turkey</td>
<td>66</td>
</tr>
<tr>
<td>Ozgur Gundem v Turkey</td>
<td>67</td>
</tr>
<tr>
<td>Plattform 'Arzte für das Leben' v Austria</td>
<td>62</td>
</tr>
<tr>
<td>Edwards v United Kingdom</td>
<td>63</td>
</tr>
<tr>
<td>Latin American Regional Court v United Kingdom</td>
<td>64</td>
</tr>
<tr>
<td>Akkoc v Turkey</td>
<td>65</td>
</tr>
<tr>
<td>Burdov v Russia</td>
<td>66</td>
</tr>
<tr>
<td>Kilic v Turkey</td>
<td>66</td>
</tr>
<tr>
<td>Ozgur Gundem v Turkey</td>
<td>67</td>
</tr>
<tr>
<td>2.5 THE RIGHT TO LIFE</td>
<td>68</td>
</tr>
<tr>
<td>LCB v UK</td>
<td>68</td>
</tr>
<tr>
<td>Paton v United Kingdom</td>
<td>68</td>
</tr>
<tr>
<td>Salman v Turkey</td>
<td>69</td>
</tr>
<tr>
<td>Edwards v United Kingdom</td>
<td>70</td>
</tr>
<tr>
<td>Pretty v United Kingdom</td>
<td>71</td>
</tr>
<tr>
<td>McKerr v United Kingdom; Jordan v United Kingdom; Kelly v United Kingdom;</td>
<td>71</td>
</tr>
<tr>
<td>Shanaghan v United Kingdom</td>
<td>71</td>
</tr>
<tr>
<td>Streletz, Kessler and Krenz v Germany</td>
<td>72</td>
</tr>
<tr>
<td>NHS Trust A v M; NHS Trust B v H</td>
<td>73</td>
</tr>
<tr>
<td>Re A (Children) (Conjoined Twins: Surgical Separation)</td>
<td>74</td>
</tr>
<tr>
<td>2.6 TERRITORIAL APPLICATION</td>
<td>74</td>
</tr>
<tr>
<td>Al-Adsani v United Kingdom</td>
<td>74</td>
</tr>
<tr>
<td>Cyprus v Turkey</td>
<td>75</td>
</tr>
<tr>
<td>Chapter 3 THE LEGAL PROCESS IN GENERAL</td>
<td>77</td>
</tr>
<tr>
<td>3.1 ACCESS TO A COURT</td>
<td>77</td>
</tr>
<tr>
<td>Golder v United Kingdom</td>
<td>77</td>
</tr>
<tr>
<td>(1) In the determination of a criminal charge</td>
<td>77</td>
</tr>
<tr>
<td>Adolf v Austria</td>
<td>77</td>
</tr>
<tr>
<td>(2) In the determination of civil rights and obligations</td>
<td>78</td>
</tr>
<tr>
<td>Ashingdane v United Kingdom</td>
<td>78</td>
</tr>
<tr>
<td>Air Canada v United Kingdom</td>
<td>78</td>
</tr>
<tr>
<td>Pellegrin v France</td>
<td>79</td>
</tr>
<tr>
<td>United Kingdom cases</td>
<td>79</td>
</tr>
<tr>
<td>R v Head Teacher of Alperton Community School and Others</td>
<td>79</td>
</tr>
<tr>
<td>(3) Civil right must exist in national law</td>
<td>80</td>
</tr>
<tr>
<td>Powell and Rayner v United Kingdom</td>
<td>80</td>
</tr>
<tr>
<td>Limitations on civil rights</td>
<td>80</td>
</tr>
<tr>
<td>Fayed v United Kingdom</td>
<td>80</td>
</tr>
<tr>
<td>(4) Limitations on access to a court</td>
<td>82</td>
</tr>
<tr>
<td>Failure on the part of the applicant</td>
<td>82</td>
</tr>
<tr>
<td>Hennings v Germany</td>
<td>82</td>
</tr>
<tr>
<td>Limitation period</td>
<td>82</td>
</tr>
<tr>
<td>Stubbings and Others v United Kingdom</td>
<td>82</td>
</tr>
<tr>
<td>Luisa Diamantina Romero de Ibanez and Roberto Guillermo Rojas v United</td>
<td>83</td>
</tr>
<tr>
<td>Kingdom</td>
<td>83</td>
</tr>
</tbody>
</table>
3.2 COMPETING PUBLIC INTEREST CONSIDERATIONS

Tinnelly and McElduff v United Kingdom 83

Public policy 84

Osman v United Kingdom 84

Clunis v United Kingdom 85

Devenney v United Kingdom 85

Devlin v United Kingdom 86

State immunity 86

Al-Adsani v United Kingdom 86

Fogerty v United Kingdom 86

McElhinney v Ireland 86

3.3 ACCESS TO LEGAL ADVICE

Murray v United Kingdom 87

Brennan v United Kingdom 88

3.4 FAIR TRIAL

(1) Adequate information 91

Chichlian and Ekindjian v France 91

Steel v United Kingdom 91

Mattoccia v Italy 91

Zoon v The Netherlands 92

(2) Conduct of the judge 92

Kraska v Switzerland 92

CG v United Kingdom 93

United Kingdom cases 94

Director General of Fair Trading v Proprietary Association of Great Britain and Proprietary Articles Trade Association 94

(3) Effective and accessible procedure 95

McGinley and Egan v United Kingdom 95

(4) Impartiality and independence 95

Lauko v Slovakia 95

Kadubec v Slovakia 95

O'Hara v United Kingdom 96

McGonnell v United Kingdom 97

De Haan v The Netherlands 97

Kingsley v United Kingdom 98

Jordan (Stephen) v United Kingdom 98

Morris v United Kingdom 99

(5) Trial within a reasonable time 100
Partington v Greece 100
Ferrantelli and Santangelo v Italy 100
IJL, GMR and AKP v United Kingdom 101
Dede and Others v Turkey 101
(6) Double jeopardy 102
Fischer (Franz) v Austria 102
(7) Jury bias 102
Remli v France 102
Gregory v United Kingdom 103
Sander v United Kingdom 104
3.5 EVIDENCE 104
(1) Admissibility of evidence 104
Schenk v Switzerland 104
Admissibility of unlawfully obtained evidence 105
Chinoy v United Kingdom 105
Khan v United Kingdom 106
PG and JH v United Kingdom 107
United Kingdom cases 108
Attorney General’s Reference (No 3 of 1999) 108
(2) Disclosure of evidence 109
Edwards v United Kingdom 109
Rowe and Davis v United Kingdom 109
Jasper v United Kingdom 110
Fitt v United Kingdom 110
IJL, GMR and AKP v United Kingdom 111
Atlan v United Kingdom 112
Garcia Alva v Germany 112
United Kingdom cases 113
R v Stratford Justices, ex parte Imbert 113
(3) Disclosure of documents 113
Bendenoun v France 113
Foucher v France 114
Kuopila v Finland 114
3.6 EXAMINATION OF WITNESSES 115
Unterpertinger v Austria 115
(1) Use of written statements 115
Kostovski v The Netherlands 115
Failure to provide an opportunity to confront witness and the rights of defence 116
Saidi v France 116
(2) Anonymous witnesses 116
Kostovski v The Netherlands 116
Doorson v The Netherlands 117
Visser v The Netherlands 117
United Kingdom cases 118
HM Advocate v Smith (Peter Thompson) 118
Police witnesses 119
Van Mechelen and Others v The Netherlands 119
PART 2 CRIMINAL LAW

Chapter 4 GENERAL PRINCIPLES OF CRIMINAL LAW

4.1 MEANING OF 'CRIMINAL CHARGE'

Schmautzer v Austria 125
Campbell and Fell v United Kingdom 125
Quinn v Ireland 126
Heaney and McGuinness v Ireland 127
JB v Switzerland 128

4.2 BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE

Salabiaku v France 128
Phillips v United Kingdom 129
Heaney and McGuinness v Ireland 130
Quinn v Ireland 130
Telfner v Austria 131
United Kingdom cases 131
R v DPP, ex parte Kebilene 131
R v Lambert 132
Lynch (Stuart) v DPP 133
HM Advocate v McIntosh 133
R v Rezvi 133
R v Benjafled 134

4.3 PRIVILEGE AGAINST SELF-INCRIMINATION 134

(1) Compulsory disclosure of documents 134
Funke v France 134
JB v Switzerland 135

(2) Statements obtained by coercion 136
Saunders v United Kingdom 136
United Kingdom cases 137
R v Hertfordshire County Council, ex parte Green Industries Ltd 137
Attorney-General's Reference (No 7 of 2000) 138

(3) Right to remain silent 138
Murray v United Kingdom 138
Averill v United Kingdom 139
McGee v United Kingdom 140
Heaney and McGuinness v Ireland 140
Quinn v Ireland 140
Condron v United Kingdom 141
Chapter 5  INVESTIGATION  143

5.1 ENTRY, SEARCH AND SEIZURE  143
(1) Interference with privacy  143  *McLeod v United Kingdom  143
(2) Interference with correspondence  143  Seizure of documents  143  
  Mailhe v France  143  Cremieux v France  145

5.2 SURVEILLANCE  146
(1) Interception of telephone calls  146  Klass and Others v Federal Republic of Germany  146  Malone v United Kingdom  147
(2) Private and business telephones  148  Huvig v France  148
(3) Recording of conversation with a third party  149  A v France  149
(4) Interception of office telephones  149  Halford v United Kingdom  149
(5) Intrusive surveillance  150  Khan v United Kingdom  150  PG and JH v United Kingdom  151  United Kingdom cases  152  R v P  152

Chapter 6  ARREST, DETENTION AND BAIL  155

6.1 MEANING OF DETENTION  155  Guzzardi v Italy  155

6.2 RIGHT TO ‘SECURITY’ OF THE PERSON  155  Bozano v France  155

6.3 GROUNDS OF ARREST  156
(1) Reasonable suspicion  156  Brogan and Others v United Kingdom  156  Fox, Campbell and Hartley v United Kingdom  156  Murray v United Kingdom  157

6.4 LENGTH OF PRE-TRIAL DETENTION  158
(1) Detention before charge  158  Brogan and Others v United Kingdom  158
(2) Detention pending trial  158  Wemhoff v Federal Republic of Germany  158  MB v Switzerland  159  Szeloch v Poland  159

6.5 PROCEDURE ‘PRESCRIBED BY LAW’  160
6.6 DETENTION OF MINORS

6.7 DETENTION OF THE MENTALLY ILL

6.8 RIGHT TO COMPENSATION FOR UNLAWFUL ARREST

6.9 BAIL

Chapter 7 SENTENCING AND PUNISHMENT

7.1 RELEASE ON LICENCE AND TARIFF SENTENCING

7.2 RETROSPECTIVE PUNISHMENT

7.3 CAPITAL PUNISHMENT
7.4 UNACCEPTABLE FORMS OF PUNISHMENT 178
(1) Corporal punishment 178
Tyrer v United Kingdom 178
(2) Torture and inhuman or degrading treatment 178
Degrees of severity 178
Ireland v United Kingdom 178
Salman v Turkey 179
7.5 TREATMENT IN PRISON 180
Akkoc v Turkey 180
Price v United Kingdom 181
United Kingdom cases 182
Napier v The Scottish Ministers 182
7.6 DEATH IN CUSTODY 182
Edwards v United Kingdom 182
Keenan v United Kingdom 183
Akdeniz v Turkey 184
United Kingdom cases 185
Wright & Another v Secretary of State for the Home Department 185
R (Amin) v Secretary of State for the Home Department 186
R v DPP, ex parte Manning 186
Orange v Chief Constable of West Yorkshire 187

Chapter 8 SUBSTANTIVE CRIMINAL ISSUES 189
8.1 DEFINITION OF A CRIMINAL OFFENCE 189
Kokkinakis v Greece 189
8.2 DOUBLE JEOPARDY 189
Gradinger v Austria 189
8.3 MARITAL RAPE 190
SW v United Kingdom and CR v United Kingdom 190
8.4 BLASPHEMOUS LIBEL 192
Gay News Ltd and Lemon v United Kingdom 192
8.5 CRIMINAL CONTEMPT OF COURT 192
Times Newspapers Ltd and Neil v United Kingdom 192
8.6 RAPE 193
Aydin v Turkey 193
X and Y v The Netherlands 194
8.7 SELF-DEFENCE, THE PREVENTION OF CRIME AND THE USE OF LAWFUL FORCE 195
Klass and Others v Federal Republic of Germany 195
McCann v United Kingdom 196
Kelly v United Kingdom 197
8.8 CONSENT 197
Laskey, Jaggard and Brown v United Kingdom 197
PART 3 IMMIGRATION, DEPORTATION AND ASYLUM 195

Chapter 9 RIGHTS OF IMMIGRANTS AND ASYLUM SEEKERS 201
9.1 RIGHT TO CONTROL ENTRY 201
(1) To be exercised in a non-discriminatory manner 201
Abdulaziz, Cabales and Balkandali v United Kingdom 201
East-African Asians v United Kingdom 202
United Kingdom cases 203
R v Secretary of State for the Home Department, ex parte Isiko 203
(2) Respect for the family 203
Ahmut v The Netherlands 203
9.2 DETENTION OF ENTRANTS AT BORDER 204
Amuur v France 204
9.3 ASYLUM 205
(1) Risk of ill-treatment 205
Hatami v Sweden 205
Nsona v The Netherlands 206
Vilvarajah v United Kingdom 207
(2) Collective expulsion of asylum seekers 208
Conka v Belgium 208
United Kingdom cases 209
Sepet and Bulbul v Secretary of State for the Home Department 209

Chapter 10 EXTRADITION AND DEPORTATION 211
10.1 EXTRADITION 211
Soering v United Kingdom 211
(1) Disguised extradition 212
Bozano v France 212
10.2 DEPORTATION 213
(1) Evidence required in support of applicant’s claim 213
HLR v France 213
(2) Habecas corpus and judicial review 214
Chahal v United Kingdom 214
(3) Risk stemming from factors outside control of State 216
D v United Kingdom 216
Bensaid v United Kingdom 217
(4) Review of current situation in receiving State 217
Ahmed v Austria 217
Jabari v Turkey 218
Hilal v United Kingdom 219
United Kingdom cases 219
X v Secretary of State for the Home Department 219
PART 4  FAMILIES, CHILDREN AND GENDER  221

Chapter 11  FAMILIES  223

11.1 NOTION OF ‘FAMILY LIFE’ CAN INCLUDE A VARIETY OF RELATIONSHIPS  223

(1) Nephew  223
  Boyle v United Kingdom  223

(2) Grandparents  223
  Bronda v Italy  223

(3) Same sex relationships  224
  United Kingdom cases  224
  Fitzpatrick v Sterling Housing Association Ltd  224

11.2 RIGHT TO DIVORCE AND REMARRY  225
  Johnston v Ireland  225

(1) Prohibition on remarriage  225
  F v Switzerland  225

11.3 RIGHTS OF PARENTS  226

(1) Best interests of the child  226
  McMichael v United Kingdom  226
  Bronda v Italy  226

(2) Rights of the natural father  227
  Access  227
  Sahin v Germany; Sommerfeld v Germany; Hoffmann v Germany  227
  Glaser v United Kingdom  228
  Adoption  228
  Keegan v Ireland  228
  Presumption of paternity  229
  Kroon v The Netherlands  229
  Paternity leave  230
  Petrovic v Austria  230

11.4 LIFESTYLE  231

(1) Refusal to grant custody to parent living in a homosexual relationship  231
  Salgueiro da Silva Mouta v Portugal  231
  Frette v France  231
  Cardoso and Johansen v United Kingdom  232

11.5 REGISTRATION OF A FORENAME  232
  Guillot v France  232

11.6 LEGITIMATE INTERFERENCE WITH THE RIGHT TO PRIVATE AND FAMILY LIFE  233

(1) Public order and preventing crime  233
  Moustaquim v Belgium  233
  Benrachid v France  233
  Djaid v France  234
11.7 RIGHT OF SPOUSES NOT TO GIVE EVIDENCE AGAINST EACH OTHER IN CRIMINAL INVESTIGATIONS: BREACH OF CONFIDENTIALITY BY AUTHORITIES

Z v Finland

Chapter 12 CHILDREN

12.1 CARE, CUSTODY AND ACCESS

(1) Length of proceedings
Paulsen-Medalen and Svensson v Sweden
McMichael v United Kingdom
United Kingdom cases
A Health Authority v X (Discovery: Medical Conduct)

(2) Children taken into care
TP and KM v United Kingdom
United Kingdom cases
Re S (Minors); Re W (Minors)

(3) Family reunion
Hokkanen v Finland
Eriksson v Sweden
Olsson v Sweden (No 2)

(4) Access to personal files
Gaskin v United Kingdom

(5) Denial of access to family members
Andersson v Sweden
W v United Kingdom
Olsson v Sweden (No 1)
Johansen v Norway

(6) Denial of custody
Rieme v Sweden

(7) Discrimination
Hoffman v Austria

(8) Children of prisoners
United Kingdom cases
R v Secretary of State for the Home Department, ex parte P; R v Secretary of State for the Home Department, ex parte Q

12.2 IMMIGRATION

(1) Family reunion
Ahmut v The Netherlands
Güll v Switzerland

12.3 ADOPTION

Keegan v Ireland
United Kingdom cases
Re B (A Minor)

12.4 REGISTER OF BIRTHS

(1) Paternity
Kroon v The Netherlands
Rasmussen v Denmark 253
Registration of transsexual as father of child 253
X, Y and Z v United Kingdom 253
(2) Alteration of birth certificate 254
Rees v United Kingdom 254
12.5 ILLEGITIMATE CHILDREN 255
(1) Recognition 255
Johnston v Ireland 255
Marckx v Belgium 256
(2) Right to a name 257
Stjerna v Finland 257
(3) Hereditary rights 258
Inze v Austria 258
12.6 DETENTION 258
Bouamar v Belgium 258
Nielsen v Denmark 259
United Kingdom cases 260
W Borough Council v DK and Others 260
12.7 SEXUAL ABUSE 260
(1) Right to bring proceedings 260
Stubbings and Others v United Kingdom 260
Z and Others v United Kingdom 261
(2) Remedies 262
X and Y v The Netherlands 262
(3) Protection 262
A v United Kingdom (Human Rights: Punishment of Child) 262
12.8 ABDUCTION 263
(1) Right to return of children the subject of international abduction 263
Ignaccolo-Zenide v Romania 263
12.9 LEGITIMATE REMOVAL OF CHILD FROM JURISDICTION 264
United Kingdom cases 264
Payne (Clive Anthony) v Payne (Andrea Catherine) 264

Chapter 13 EDUCATION 265
13.1 SCHOOLS 265
(1) Education in conformity with convictions of parents 265
Valsamis v Greece and Efstratiou v Greece 265
(2) Sex education 266
Kjeldsen, Busk Madsen and Pedersen v Denmark 266
(3) Corporal punishment 266
Costello-Roberts v United Kingdom 266
Campbell and Cosans v United Kingdom 267
13.2 DISCRIMINATION 268
Belgian Linguistic Case (No 2) 268
X v United Kingdom 269
13.3 EXCLUSION AND SELECTION PROCEEDINGS
AND ACCESS TO EDUCATION

Chapman (Sally) and Others v United Kingdom
United Kingdom cases
R v Head Teacher of Alperton Community School and Others

Chapter 14 SEX AND GENDER ISSUES

14.1 SEX DISCRIMINATION
(1) General principles
Abdulaziz, Cabales and Balkandali v United Kingdom
Schmidt v Germany
Schuler-Zgraggen v Switzerland
(2) State benefits
Van Raalte v The Netherlands
Fielding v United Kingdom
Paternity rights and benefits
Rasmussen v Denmark
Petrovic v Austria

14.2 GAY AND LESBIAN CONDUCT
(1) Illegality of gay and lesbian acts
Modinos v Cyprus
Dudgeon v United Kingdom
Norris v Ireland
Laskey, Jaggard and Brown v United Kingdom
ADT v United Kingdom
(2) The age of consent
X v United Kingdom (Wells v United Kingdom)
Sutherland v United Kingdom
(3) The right to family life
Application No 9369/81
(4) Military service
Application No 9237/81
Lustig-Prean and Beckett v United Kingdom
Smith and Grady v United Kingdom

14.3 TRANSSEXUALS AND GENDER REASSIGNMENT
(1) Recognition by authorities
Rees v United Kingdom
B v France
Sheffield and Horsham v United Kingdom
(2) The right to family life
X, Y and Z v United Kingdom
PART 5 RIGHTS OF EXPRESSION AND ASSOCIATED ISSUES

Chapter 15 CONSCIENTIOUS AND RELIGIOUS FREEDOMS

15.1 POSITIVE DUTY ON STATE TO ENSURE RELIGIOUS FREEDOMS ENJOYED

Otto-Preminger Institute v Austria 293
Buscarini v San Marino 294

15.2 DISTINCTION BETWEEN HOLDING AND EXPRESSION OF BELIEF

Handyside v United Kingdom 294
(1) Freedom to worship
Manoussakis v Greece 295
ISKCON (International Society for Krishna Consciousness) v United Kingdom 295
Serif v Greece 296
Grande Oriente D'Italia Di Palazzo Giustiniani v Italy 297
(2) State church permitted
Darby v Sweden 297

15.3 RIGHT TO PROMOTE BELIEFS

Kokkinakis v Greece 298
Arrowsmith v United Kingdom 299

15.4 RELATIONSHIP WITH CHILDREN AND CHILD CUSTODY

Hoffman v Austria 299

15.5 LIMITATIONS ON RIGHTS TO PRACTISE

(1) In context of employment
Ahmad v United Kingdom 300
Stedman (Louise) v United Kingdom 301
Thlimmenos v Greece 301
(2) In the military
Kalac v Turkey 302

15.6 OBLIGATIONS ON PUBLIC SERVICE EMPLOYEES

Wille v Liechtenstein 302

Chapter 16 PRESS FREEDOMS, PRIVACY, LIBEL AND SLANDER

16.1 JOURNALISTIC FREEDOM OF EXPRESSION AND PUBLIC INTEREST

(1) Confidentiality of sources
Goodwin v United Kingdom 305
(2) Contempt of court
Sunday Times v United Kingdom 306
(3) Public interest
Jersild v Denmark 307
Contents

Fressoz and Roire v France 308
Ceylan v Turkey 309
Arslan v Turkey 310
Erdogdu v Turkey 310
News Verlags GmbH & Co KG v Austria 311
United Kingdom cases 312
Campbell (Naomi) v Mirror Group Newspapers Ltd 312
Ashdown (Paddy) MP v Telegraph Group Ltd 312
Douglas (Michael) and Zeta Jones (Catherine) and Northern & Shell plc v Hello! 313
Thompson and Venables v News Group Newspapers Ltd, Associated Newspapers Ltd and MGN Ltd 313

(4) Defamation 314
Oberschlick v Austria (No 2) 314
Thorgeir Thorgeirson v Iceland 314
Dalban v Romania 315
Nilsen and Johnsen v Norway 316
McVicar v United Kingdom 317

(5) Political criticism and the right to an opinion 317
Lingens v Austria 317
McLaughlin v United Kingdom 318
Ozturk v Turkey 319
Jerusalem v Austria 320
Defamation of judges 320
De Haes and Gisels v Belgium 320

(6) Prior restraint by injunction 321
Tolstoy Miloslavsky v United Kingdom 321

(7) Prior restraint by seizure 322
Vereniging Weekblad Bluf! v The Netherlands 322

(8) Right to advertise 322
VGT Verein Gegen Tierfabriken v Switzerland 322
United Kingdom cases 323
Prolife Alliance v British Broadcasting Corporation 323

16.2 OBSCENE MATERIAL 324
(1) Prior restraint by seizure and forfeiture 324
Handside v United Kingdom 324
Otto-Preminger Institute v Austria 325
Scherer v Switzerland 325

16.3 ARTISTIC FREEDOM VERSUS OBSCENITY AND PROTECTION OF PUBLIC MORALITY 326
(1) Film 326
Otto-Preminger Institute v Austria 326

(2) Paintings 326
Muller and Others v Switzerland 326

16.4 RIGHT TO INFORMATION 327
(1) Right to life 327
Open Door Counselling Ltd and Dublin Well Woman Centre v Ireland 327
(2) National security
Observer and Guardian v United Kingdom 328

16.5 FREEDOM OF EXPRESSION IN A COMMERCIAL CONTEXT
Markt Intern Verlag GmbH and Beerman v Federal Republic of Germany 329
Jacobowski v Germany 330
Tele 1 Privatfernsehgesellschaft mbH v Austria 331

16.6 GENERAL PRIVACY ISSUES 332
(1) Telephone tapping of third party line
Lambert v France 332
(2) Search orders
Chappell v United Kingdom 333
(3) Right of access to personal information on file
Leander v Sweden 333
(4) Search of lawyer’s office – legal professional privilege
Niemietz v Germany 335
(5) Interception of correspondence
Foxley v United Kingdom 335

Chapter 17 FREEDOM OF ASSOCIATION, ASSEMBLY AND DEMONSTRATION 337
17.1 THE RIGHT TO PEACEFUL ASSEMBLY AND DEMONSTRATION 337
(1) State’s positive duty to protect lawful demonstrators from reprisal
Plattform ‘Arzte für das Leben’ v Austria 337
(2) Proportionality of restrictions to legitimate aim
Ezelin v France 338
(3) Prior bans of rallies
Rai, Allmond and ‘Negotiate Now’ v United Kingdom 339

17.2 RESTRICTIONS ON POLITICAL ACTIVITY OF GOVERNMENT EMPLOYEES 340
Ahmed v United Kingdom 340
Chorherr v Austria 340
Vogt v Germany 341
Rekvenyi v Hungary 342
Ahmed and Others v United Kingdom 343
Refah Partisi and Others v Turkey 344

17.3 NEGATIVE RIGHT OF ASSOCIATION 344
(1) Trade unions
Gustaffson v Sweden 344
Young, James and Webster v United Kingdom 345
(2) Compulsory membership of unions
Sigurdur A Sigurjonsson v Iceland 346
Chapter 18  OWNERSHIP AND USE OF PROPERTY

18.1  PROPERTY RIGHTS AND LAND OWNERSHIP

(1) Right to peaceful enjoyment of home
Sporrong and Lönroth v Sweden 351
Nuisance 353
Powell and Rayner v United Kingdom 353
Hatton v United Kingdom 354

(2) Right to live on own land
Buckley v United Kingdom 355
Chapman (Sally) and Others v United Kingdom 355

(3) Protection from harassment
Whiteside v United Kingdom 356

(4) Searches and invasion of privacy
Chappell v United Kingdom 357
Gillow v United Kingdom 357

(5) The operation of planning controls
Jacobsson (Allan) v Sweden 358
ISKCON (International Society for Krishna Consciousness) v United Kingdom 359
Varey v United Kingdom 359
United Kingdom cases 360
R v Secretary of State for the Environment, Transport and the Regions, ex parte Holding and Barnes plc and Others 360

(6) Property transaction proceedings
Eisenstecken v Austria 361

(7) Licensing of premises
United Kingdom cases 361
Catscratch Ltd and Lettuce Holdings Ltd v Glasgow City Licensing Board (No 2) 361

18.2  LANDLORD AND TENANT

(1) Right of landlord freely to manage and dispose of property
James v United Kingdom 361
Melleacher v Austria 362
GL v Italy 363

(2) Protection from eviction
Spadea and Scalabrino v Italy 364
Chapter 19 COMMERCIAL LAW

19.1 COMMERCIAL RIGHTS ARE ENCOMPASSED WITHIN THE MEANING OF CIVIL RIGHTS
   Benthem v The Netherlands

19.2 DEROGATIONS FROM GUARANTEES NOT JUSTIFIED BY 'SPECIAL FEATURES'
   Funke v France
   Société Stenuit v France
   Saunders v United Kingdom

19.3 ENTITLEMENT TO PROPERTY
   (1) Assessment of compensation in the appropriation of commercial assets
   Lithgow v United Kingdom

19.4 RESPECT FOR BUSINESS PREMISES INCLUDED IN CONCEPT OF HOME
   Niemietz v Germany

19.5 FREEDOM OF EXPRESSION
   Markt Intern Verlag GmbH and Beermann v Federal Republic of Germany
   Autronic AG v Switzerland
   (1) Commercial advertising
   Casado Coca v Spain

Chapter 20 THE CONVENTION AND FUNDAMENTAL RIGHTS IN THE EC

20.1 THE RELATIONSHIP BETWEEN THE EUROPEAN COMMUNITY AND THE CONVENTION
   (1) Accession to the Convention
   Opinion 2/94
   (2) Fundamental rights generally in Community law
   Stauder v City of Ulm
   Internationale Handelsgesellschaft mbH v Einfuhrvorratsstelle für Getreide und Futtermittel
   Jégo-Quéré et Cie SA v Commission
   (3) The Convention as a source of Community law
   Firma J Nold v Commission
   Cinéthèque SA and Others v Fédération Nationale des Cinémas Français
(4) The duties of Member States to comply with fundamental principles in the application of Community law

- Wachauf (Hubert) v Federal Republic of Germany
- AM&S Europe Ltd v Commission
- Elliniki Radiophonia Tileorassi AE v Dimotiki Etaireia Pliforissis and Sotirios Kouvelas
- Society for the Protection of Unborn Children Ireland Ltd (SPUC) v Grogan
- Kaur (Surjit) v Lord Advocate

(5) Approach of the Strasbourg authorities to EC matters

- M and Co v Federal Republic of Germany
- Matthews v United Kingdom

20.2 SPECIFIC CONVENTION-DERIVED RIGHTS CONSIDERED BY THE COURT

(1) The right to a fair trial

- Musique Diffusion Française SA v Commission
- Stichting Certificatie Kraanverhuurbedrijf (SCK) and Federatie van Nederlandse Kraanverhuurbedrijven (FNK) v Commission
- Mannesmannrohren-Werke AG v Commission

(2) The right to privacy

- Stauder v City of Ulm
- National Panasonic (UK) Ltd v Commission
- A v Commission

(3) The right to family life

- Demirel v Stadt Schwäbisch Gmünd

(4) Non-retroactivity of legislation imposing penalties

- R v Kent Kirk
- Officier van Justitie v Kolphinghuis Nijmegen BV

(5) Freedom of expression

- Vereniging ter Bevordering van het Vlaamse Boekwezen, VBVB, and Vereniging ter Bevordering van de Belangen des Boekhandels, VBBB v Commission
- Elliniki Radiophonia Tileorassi AE v Dimotiki Etaireia Pliforissis and Sotirios Kouvelas
- Society for the Protection of Unborn Children Ireland Ltd (SPUC) v Grogan

(6) Right to information

- Council v Heidi Hautala

Appendix RELEVANT ARTICLES OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Index