

# The Right to Respect for Private and Family Life, Home and Correspondence



## Article 8, ECHR

1. *Every body 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.*

# The Concept of Private Life

- The right to be oneself
- The right to live as oneself
- The right to keep to oneself
- The right to inter-relate socially with others
- The right to develop and fulfil one's own personality

# The Concept of Private Life

- Respect for physical and moral integrity
- Right to a personal identity

# The Concept of Private Life

- Respect for personal or private space
- Respect for sexual orientation, identity and relations

# The Concept of Private Life

- Respect for sexual orientation, identity and relations
- Privacy and intrusive publications
- Collection of personal data by the State

# The Concept of Private Life

- Policing and collecting evidence
- Medical care and confidentiality
- Access to health information
- Victims' rights

# Surveillance

All forms of covert policing and surveillance will engage Article 8.

Secret surveillance is tolerable under the Convention

- only in so far as strictly necessary for safeguarding the democratic institutions. Such interference must be supported by relevant and sufficient reasons and must be proportionate to the legitimate aim or aims pursued.



# What is meant by family life?

- The ECHR contains no definition of “family life”
- The notion is interpreted widely
- The existence of “family life” is a question of fact.
- Some family relationships automatically are protected by Article 8:
  - a child born to parents who are lawfully married
  - the relationship between a mother and her child

# Unconventional family life

- *Unmarried fathers*
- *The extended family*
  - Family “ties” do not in themselves constitute family life
- *Atypical family structures*
  - Transsexuals
  - Same sex couples
- *Artificial insemination/adoption*
- *Children born to unmarried parents*

# Children and human rights

- The Convention applies to children as it does to adults
- No general provision recognising the need for special protection and assistance to be given to the child. The ECHR should be read with the UN Convention on the Rights of the Child
- *Nielsen v Denmark (28.11.1988)* the Court held that the rights of the child may be limited by those who have parental rights and responsibilities with regard to their custody and care.
- The importance of the family unit is recognised but, “the rights of the holder of parental authority cannot be unlimited and that it is incumbent on the State to provide safeguards against abuse.”
- Positive obligations exist

# Taking children into care

Article 8 is engaged at all stages in care cases:

- leading up to seeking a care order,
- the judicial stage of care proceedings, and
- after the care order has been made.

In *Olsson v Sweden* (24.03.1988) the Court held that the making of the care decision was not a violation of the Convention but that the way in which that decision was subsequently implemented violated Article 8.

# Immigration and the European Convention on Human Rights

Two category of cases have emerged:

- Those involving the expulsion of integrated migrants (both second generation and long term residents) normally on public order grounds following a criminal conviction;
- Those involving the decision to expel or to refuse to admit third country nationals with close family members in the Contracting State, normally on economic interest grounds, or for the maintenance of immigration policy.

# Developing principles before the European Court of Human Rights

## The *Boultif* criteria

These include:

- the nature and seriousness of the offence;
- the length of the applicant's stay in the country from which he is going to be expelled;
- the time elapsed since the offence was committed as well as the applicant's conduct in that period;
- the nationalities of the various persons concerned;
- the applicant's family situation such as length of the marriage, and other factors going to the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered in to a family relationship; and
- whether there are children of the relationship and if so their age.

# Home

**Covers right of access to and occupation of premises, a right not to be expelled and enjoy the home without interference or intrusion and a right not to be evicted or to have one's home destroyed.**

**It also encompasses the right to enjoyment of the residence free from pollution.**

# Correspondence

Covers the right to communicate and the confidentiality of private communications.

All forms of communication are protected.



# Restricting rights

1. **Any restriction on civil and political rights must be prescribed by law.**
2. **The restriction must be justified by one of the aims recognised under the European Convention.**
3. **The restriction must be shown to be “necessary in a democratic society”.**
4. **Any qualification to rights cannot be applied in a discriminatory fashion.**

**RIGHT TO RESPECT  
FOR PRIVATE AND FAMILY LIFE**



**You have**  
the right to **respect**  
**for your private and family life,**  
your home and correspondence.