

HUMAN RIGHTS REFRESHER

SOME HISTORY, and FUNDAMENTALS,

AND

AN UPDATE : 2007

Lord Nicholls of Birkenhead; "...human rights values set higher standards to day. The common endeavour, to rid the world of man's inhumanity to man, has not ceased. Conduct, once tolerated, is no longer acceptable".

Matthew v Trinidad [2004] 3 WLR 812;

(Judicial Committee of the Privy Council considering the mandatory death penalty.)

The meaning of human rights

Rights, which are universal – everyone has them;

Limitations:

. To say that I have a right to something or freedom to do something does not mean that I have unlimited right to it, or that I should not respect other peoples' rights.

Distinguish **limitations** on the scope of a right
from an **interference** with the right.

A limitation is *inherent* in the proper definition of that right.

The Rule of Law

Society should be governed by law and not by arbitrary action.

Art 7 is a good example of the Rule of law:

- (i) there should not be punishment for something, an act or omission, which was legal when it happened;
- (ii) And Art 7 includes the importance of clarity and certainty in the law which is applied throughout the convention rights.

HISTORY

- **26th June 1945** – Charter of the United Nations signed;
 - **10th December 1948** – U N Universal Declaration of Human Rights adopted;
 - **5th May 1949** – The Council of Europe was established;
 - **4th November 1950** – the European Convention for the Protection of Human Rights and Fundamental Freedoms, “the Convention” – was signed in Rome. The Convention established the European Court of Human Rights, and the Commission, sitting at Strasbourg;
 - **9th November 1998** – The Human Rights Act 1998 (“HRA”), Royal Assent;
 - **2nd October 2000** – Act comes into force
- **[and see other U N Conventions – Children, Women, Prisoners, Economic, Cultural, etc]

The Convention Articles

In the Schedule to the HRA, “the Convention rights” are : Articles 2 to 12, and 14; the First Protocol, and the Thirteenth Protocol.

The Articles are (in outline):

- Article 2: the right to life; everyone’s right to life shall be protected by law.
- 3: prohibition of torture, inhuman, or degrading treatment or punishment.
 - 4: prohibition of slavery and forced labour.
 - 5: the right to liberty and security; everyone has the right to liberty and security of person; no one shall be deprived of his liberty, except in the ways specified in this Article, and in accordance with a procedure prescribed by law.
 - 6: the right to a fair trial: right to a public, independent hearing within a reasonable time; presumption of innocence; privilege against self incrimination; right to notice of the accusation; right to have time to prepare case; legal assistance; examine witnesses.
 - 7: no punishment without law: freedom from retrospective criminal law, and the principle of legal certainty and restrictive interpretation in criminal matters
 - 8: the right to respect for private and family life; including home and

correspondence

9: freedom of thought, conscience, and religion.

10: freedom of expression.

11: freedom of assembly and association; including the right to form and join trade unions.

12: the right to marry and found a family

14: prohibition of discrimination in the delivery of Convention rights

Protocol 1: Article 1: protection of property (referred to here as Article 1-1)

2: right to education

3: right to free elections

13th Protocol- abolition of death penalty;

Three distinct categories of rights in the Convention.

The ECtHR has established these three kinds of rights, and its approach varies accordingly.

1. Absolute rights: Articles 2, 3, 4.1, and 7;

cannot be restricted; and **cannot** to be balanced with any general public interest.

2. Derogable, but otherwise unqualified rights: Articles 4.2, 4.3, 5, and 6;

state may enter a derogation, but rights are **not** to be balanced with any general public interest.

3. Qualified rights: Articles 8, 9, 10, and 11;

in a positive form, but subject to limitation or restriction clauses which enable the general public interest to be taken into account. (See *Sunday Times* case: “not a choice between two conflicting interests; there is a **principle** which is subject to a number of exceptions.”)

Articles 8, 9, 10, and 11; their restriction clauses.

The limitation or restriction clause (the “point 2” of each one), can be justified only if the person or body relying on it, or imposing it, can show:

(a) it is prescribed by law; (or in one case “in accordance with the law”);

(b) it is necessary in a democratic society, that is :-

it pursues one of the aims specifically provided in the “point 2”;

broadly put these are: national security, territorial integrity or public safety, prevention of disorder or crime, or protection of health or morals or rights of others;

it must fulfill a pressing social need; and it must be proportionate to the aim of responding to that need;

(c) it is not discriminatory.

**‘Law’ in the sense of (i) ‘in accordance with the law’ and also (ii) ‘quality of law’ – precise, foreseeable, and not arbitrary.

The HRA

The core sections of the Human Rights Act

- **Section 2** : a UK court must *take into account* any judgment or decision of the European Court or the Commission
- **Section 3** : all UK legislation must, *if possible*, be interpreted so as to be *compatible* with the Convention; *read and give effect*; legislation *whenever passed*
- **Section 6** : it is *unlawful* for a *public authority* to act in a way which is incompatible with a Convention right.
- **Section 8**: right to a remedy which is ‘just and appropriate’ including right to damages to afford ‘just satisfaction’.

“The keen debate that accompanied the passage of the human Rights Bill through Parliament, in which I was involved as a Minister, then at the Home Office – the sponsor Department for the Bill, reflected the constitutional significance of the measure. Few were unmoved.” Lord Williams of Mostyn QC, Lord Privy Seal and Leader of the House of Lords, 2003.

One of the benefits of having a law like the Human rights Act is that it plants a clear marker for the attention of those making laws as to which basic rights they will always have to justify interfering with, even when they are acting in the common interest in doing so.

Judicial review

The High Court has a jurisdiction to supervise the acts of the executive. The executive has to act in accordance with the powers granted to it, usually by Parliament, and always in accordance with the law.

Also, the question may arise whether the decision under review is within the powers of the person making the decision.

Further, the courts also consider any allegation such as that the decision is arbitrary or unfounded, or biased or that the decision maker has not allowed all the parties to put their case.

And government ministers, and all decision makers, must take proper account of people's Convention rights; if not, the decision will be unlawful.

The HRA extends the role of the Court in the realm of judicial review. The traditional view of judicial review was that what is being considered is the legality and procedural propriety of the decision, to ensure that the decision falls within the scope of the statutory discretion, to ensure that it is not improper because of bias or taking account of irrelevant matters, and to ensure that all appropriate procedural steps have been taken. But the court now must consider whether the decision infringes a Convention right, and whether the interference with a right is proportionate.

R (Daly) v Home Sec; [2001] UKHL 26;

First, the intensity of review is somewhat greater under the proportionality approach. The doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decision. **Secondly**, the proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

Parliamentary sovereignty

The judges and Parliament: the HRA specifically preserves the sovereignty of Parliament- it does not allow the court to declare that any statute is unlawful and so of no effect. The court cannot declare that an Act is invalid. The court may only declare that a specific provision of an Act is incompatible with the Act. So the court cannot interfere with the democratic process; the legislature may pursue its policies.

R (Alconbury) Developments v Sec State for Environment; [2001] UKHL 23

Challenge to ministerial decision under statutory powers to decide a question as to whether planning permission should be given to a number of proposed developments; contention was that Environment Secretary was not independent; *held*, the issue was one of administrative policy under the planning legislation; it would be undemocratic for the courts to undermine planning questions themselves, as this was the scheme of the planning legislation.

BUT SEE....

R (Jackson) v Attorney General; [2005] UKHL 56;

where a challenge was made to the manner in which the Hunting Act 2004 was passed; the challenge failed, on the ground that there had not been a failure of procedure. But it was agreed that there was no rule that the courts could **not** consider the validity of a statute and the issue of the validity of the Hunting Act was one of statutory interpretation.

And several Law Lords contemplated a possibility of the courts holding that the Human Rights Act provided basic principles, and that an attempt by a Parliament to ignore them would be available to challenge in the courts; thus: -

Lord Steyn; para 102, “Moreover, the ECHR as incorporated into our law by the Human Rights Act 1998 created a new legal order...The supremacy of Parliament is still the *general* principle of our constitution. It is a construct of the common law, the judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.”

Lord Hope, para 104 et seq;

Baroness Hale, para 159, “The court will treat with particular suspicion, (and might even reject) any attempt to subvert the rule of law by removing governmental action affecting the rights of the individual from all judicial scrutiny.”

And see her clear review of the history of the enacting of the Parliament Act 1911.

Deference to the legislature or to the decision maker

R v Kebilene[2000] 2 A C 326; in some circumstances it will be appropriate for the courts to recognise that there is an area of judgment within which the judiciary will defer, on democratic grounds, to the considered opinion of the elected body or person whose act or decision is said to be incompatible with the Convention.....it will be easier for it to be recognised where the issues involve questions of social or economic policy, much less so where the rights are of high constitutional importance or are of a kind where the courts are especially well placed to assess the need for protection.

Devolution

The Scotland Act 1998 – the Scottish Parliament

The Government of Wales Act 1998 – the Welsh National Assembly

Northern Ireland Act 1998 – the Assembly of Northern Ireland

- also the Northern Ireland Human Rights

Commission which may review the adequacy and effectiveness of N I law and practice relating to the protection of human rights

The devolved legislatures are subject to the HRA and any legislation passed by them which infringes the Act can be declared void and of no effect. The Judicial Committee of the Privy Council sits to consider these cases.

Art 2; Right to Life

‘We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness’.

American Declaration of Independence, 4th July 1776

Thirteenth protocol :

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

R(Middleton) v W Somerset Coroner; [2004]UKHRR 501; H L

Makes changes in the form of coroner’s verdicts

A prisoner hanged himself in a prison cell; he was a known suicide risk. The inquest jury gave a note of their opinion, that the prison service had failed in its duty of care for prisoners; the coroner declined to record it publicly, and the prisoner’s mother sought judicial review of that refusal.

Held an inquest was the means by which the state ordinarily discharged its procedural obligation to institute an *effective* public investigation into a death involving a possible breach of Art 2; ordinarily the inquiry should culminate in an expression of a jury’ conclusion on the disputed factual issues. The wording of the Coroner’s Act 1988- “how, when and where did the deceased come by his death” should mean “how” meaning ‘in what circumstances’ and s.3 of the HRA permitted this.

Van Colle Chief Constable of Herts: [2006] EWHC 360; the state was held to be under a positive obligation to protect life where a witness in a murder trial was killed shortly before he was due to give evidence. The victim had reported threats to the police who had failed to protect him. The court held that there was a sufficient risk to engage Art 2.

R (A) v Lord Saville; [2002] 1 WLR 1249; judicial review of decision to maintain venue in Londonderry; soldiers feared attempts on life; *held*, Art 2 engaged; risk to life not so high as 'real and immediate risk to life'- which was the test applied by the Inquiry; risk of breach. To accommodate Art 2 must consider subjective fear and objective;
Held the Inquiry must hear evidence not in Londonderry.

Oneryildiz v Turkey; (2004) 39 EHRR 253 ;
Applicant and family; lived in slum quarter of Istanbul; near to a tip; experts warned of danger from possible explosion; slip and methane explosion occurred; deaths; *held*, Art 2 engaged; breach may be envisaged in relation to environmental issues giving rise to serious risk to life, or various aspects of right to life.

Art 3; Prohibition of Torture

' Man's inhumanity to man

Makes countless thousands mourn.'

Man was made to Mourn. Robert Burns. 1759- 1796

Price v UK; 10.7.01; four limb deficient thalidomide victim committed to custody for contempt of court; degrading treatment; *held*, breach of Art 3.

N.B. ECHR held that *intent* is not a necessary ingredient.

A v Home Sec (No 2) 2004 EWCA Civ 1123; the question arose how far it was relevant in a terrorist case that an order made by the Sec of State might be founded on evidence obtained by torture. The So S certified that that appellants were suspected international terrorists, and that he had a reasonable belief that their presence in the U K was a national security risk, and so they were detained. He formed his belief and suspicion on the basis of statements and material placed before him. The question was raised what the court should do if there was a possibility that the evidence was obtained by torture.
The Court of Appeal held by a majority that it would not expect the S of S to investigate each statement upon which he made his certificate, with a view to deciding whether it was made in circumstances that involved a breach of Art 3.

Art 4; Prohibition of Slavery and Forced Labour

A slave by birth: I left my native land,
And found my freedom on Britannia's strand:
Blest Isle! Thou Glory of the Wise and Free!
Thy Touch alone unbinds the Chains of Slavery.

Epitaph on a tombstone in the churchyard of Windermere Parish Church; in memory of Rasselas Bellfield, a native of Abyssinia, who departed this life on 16th day of January 1822, aged 32 years.

Mussele v Belgium; (1983) 6 EHRR 163; pupil *avocat* required to perform unpaid work; *held* no violation.

Siliadin v France; (2006) 43 EHRR 16; immigrant aged 15 came from Togo to France, to work; forced to work in domestic duties as a servant, without payment and without rests or holidays, and with no schooling although this had been promised. ECHR *held* that there was a violation of Art 4, as being forced labour and servitude.

Art 5 The Right to Liberty and Security

'Some village – Hampden, that with dauntless breast
The little tyrant of his fields withstood,
Some mute inglorious Milton here may rest,
Some Cromwell, guiltless of his country's blood.' *Thomas Gray; Elegy in a Country Churchyard.*

Austin v Met 2005 EWHC 480 QB;

May Day 2001, Oxford Circus, London; police held crowd of people for many hours, some being protesters, but many not so. *held* no breach of Art 5 – Art 5(1)(c) covered the situation, where necessary to prevent violent offences, and to bring some persons detained before a court.

R (Laporte) v Chief Constable of Gloucestershire; [2006] UKHL 55

On 22.3.03, 3 coaches travelling from London to RAF Fairford, Gloucester; the applicant was one of 120 passengers, intending to take part in a demonstration against the

Iraq war. Some way short of Fairford, coaches were stopped by police; a search was conducted, and some items were seized. The police turned the coaches round, and escorted them back to London, *without a stop*. Court of Appeal *Held*, (1) the initial arrest was lawful; but, (2) the detention all the way back to London was not lawful, as there was no imminent apprehension of a breach of the peace even to warrant transitory detention, and to detain for 2 ½ hours went far beyond what was necessary, and was disproportionate.

HOUSE OF LORDS *held*, even the first arrest was not lawful; when the coaches were first stopped there was no imminent breach of the peace - a necessary condition for arrest – and it was disproportionate.

Art 6 The Right to a Fair Trial

‘It is always refreshing to be present at a trial conducted by a big minded judge. Humble people who have had their cases considered with patience, even when defeated, leave a court without rancour, and perhaps they even recognise that there must have been something of merit in the views that prevailed against them.’

The Last Serjeant, by Serjeant Sullivan.

In re Medicaments and Related Classes of Goods (No 2), *DGFT v Proprietary Association*, [2001] 1 WLR 700; Court of Appeal, having examined the jurisprudence of the European Court, **altered** the English approach to bias, from one in which the court decided the likelihood of the lower court being *in fact* biased, to one in which the court asks the *fair minded observer* would have thought.

Presumptions putting the burden of disproving them on the defendant, are permitted by ECHR; but they must not be arbitrary or disproportionate – and must take account of how easy it is for the defendant to rebut them, the importance of the circumstances, and any difficulty lying on the prosecution.

Sheldrake v DPP; A G Reference 4 of 2002; [2004] UKHL 43; HL;

The task of the court is always to determine whether a burden imposed by Parliament unjustifiably infringes the presumption of innocence.

The first point is to decide if the burden is a legal (persuasive) one or an evidential one. If it is a legal one, does it violate Art 6(2), and if so, can it be read

down. A legal burden imposes a burden on the defendant to satisfy a court on the balance of probabilities

An evidential burden will not violate Art 6(2); that arises where some evidence arises upon which the court could decide the issue in the favour of the defendant : once discharged, the onus switches back to the prosecution.

In *Sheldrake*, where the burden was on a driver suspected of being drunk to show that he was not likely to drive, the court bore in mind the danger of driving when affected, and the ability of the driver to prove that he would not drive, and so *held* that the burden was not unreasonable, or unnecessary, or disproportionate.

In the *AG Reference* case, considering s.11 of the Terrorism Act, of belonging to a proscribed organisation, where it was a defence that the organisation was not proscribed at the time when the defendant belonged to it, the Lords *held* that it was a legal burden, but the offence was serious, the defendant might have difficulty in proving the material facts, and so the wording of the defence should be read down, and made only an evidential burden.

R v Makuwa; [2006] 1 WLR 2755;

False passport contrary to immigration Acts; it is a defence that the defendant is a refugee, and that he has made he presented himself to specified persons on arrival in UK; *held* burden of proof as to the state of being a refugee was on the prosecution to prove he was not a refugee; but the burden was on the defendant to prove on a balance of probabilities to show the remainder.

Access to justice

C v Home Office; [2004] EWCA Civ 234;

Re legal fees for representation in front of CICA; costs of extra medical reports; *held*, Art 6 and access to justice might require the CICA to pay such costs for the claimant.

Take care, on access, to distinguish *Golder* and *Matthews*

Golder v UK: 1979;

Prison governor prevented inmate from corresponding with his lawyer; *held* violation of Art 6

Matthews v Secretary of State; 2003; H L;

Royal Navy serviceman, served 1955 – 68; contracted asbestosis; claimed for injury; Minister relied on s. 10 as barring any claim against the Crown for pre 1987 disease; *held*, Art 6 did not guarantee any particular content of rights.

Art 8; Right to Respect for Private and Family Life

‘The house of every one is to him as his castle and fortress.’

Semayne’s case; Coke, 5 Rep. 91b

Lough v First Secretary of State [2004] 1 WLR 2557 C. A.

Local Authority refused planning permission for development for 20 storey building as breaching its unitary development plan; inspector found in favour of developers; judge dismissed residents’ appeal; CA *held* Art 8 creates no absolute right to amenities currently enjoyed; notwithstanding development departed from plan, inspector has struck a balance; Art 8 and Protocol 1 - art 1 must inform planning decision; here nothing arbitrary or disproportionate.

Jones v Warwick University; [2003] 1 WLR 954; personal injury claim; defendants instructed private investigator to watch claimant; investigator got access to claimant’s home by acting as market researcher, and used a hidden camera; *held*, 1. the evidence was admissible; 2. the court could register breach of Art 8 by order for costs – especially as there were other ways of obtaining the evidence.

Buck v Germany; (2006) 42 EHRR 21;

search warrant held not proportionate – the premises searched were not those of the defendant, and the charge was for a minor traffic violation not classified as ‘criminal’,

Green Corns; [2005] EWHC 958 QB;

newspaper published addresses of homes for troubled children resulting in a campaign by local residents to have the homes abandoned; *held* injunction to restrain publication was necessary in a democratic society and proportionate.

Wainwright v Home Office; [2003] UKHL 53;
Wainwright v UK; (2006) Times 3.10.06;

Visitors to prison, subjected to embarrassing strip searches. The House of Lords *held* that there was no remedy in English law

The ECHR has *held* that the English courts failed to protect the right of privacy of the complainants.

Campbell v MGN Ltd; [2004] UKHL 22;

“The time has come to recognise that the values enshrined in articles 8 and 10 are now part of the cause of action for breach of confidence. As Lord Woolf CJ has said, the courts have been able to achieve this result by absorbing the rights protected by articles 8 and 10 into this cause of action: *A v B* [2003] QB 195 at 202. Further, it should now be recognised that for this purpose these values are of general application. The values embodied in articles 8 and 10 are as much applicable in disputes between individuals or between an individual and a non-governmental body such as a newspaper as they are in disputes between individuals and a public authority.” Lord Nicholls.

Art 9 Freedom of Thought, Conscience and Religion

Stone walls do not a prison make,

Nor iron bars a cage;

Minds innocent and quiet take

That for an hermitage.

If I have freedom in my love,

And in my soul am free,

Angels alone that soar above

Enjoy such liberty.

Richard Lovelace; 1618 – 1658.

R(Begum) v Head teacher and Governors of Denbigh High School [2006] UKHL 15

Judicial review sought of decision of school that pupil should attend wearing uniform of school uniform rules, which permitted the wearing of a shalwar kameeze; 79% of pupils were Muslim; uniform had been designed to be inclusive and sympathetic of the needs of a diverse community. The pupil argued that the uniform contradicted her religious beliefs, as to the strict requirement of Islam, and she should be allowed to wear the jilbab, and the decision excluded her

Held the school had gone to some lengths of consultation to ensure that their rules were acceptable, and the decision was proportionate; so although the pupil had a right to manifest her religion under Art 9 and the school rules interfered with that, the school was

entitled to insist she was dressed in accordance with the uniform policy; the policy had a legitimate aim and was not a violation of Art 9; and she was not excluded with Art 1 of Pro 1.

Art 10; Freedom of Expression

‘The courts owe a special responsibility to the public as the constitutional guardian of the freedom of political debate.’ Laws L J, *Prolife v BBC*

Selisto v Finland; (2006) 42 EHRR 8;

“The Court further recalls the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. In cases such as the present one, the national margin of appreciation is circumscribed by the interests of a democratic society in enabling the press to exercise its vital role of “public watchdog” by imparting information of serious public concern.”

Krone Verlag GMBH v Austria; (2006) 42 EHRR 28

Art 10 ; comparison of trade prices- maintaining the reputation of others within the meaning of Art 10(2) ***

Public interest and breach of confidence will play a large part in competing claims of freedom of expression and privacy.

Prince of Wales v Associated Newspapers; [2006] EWCA 1776;

1997, Prince visited Hong Kong, and on his return wrote a journal about it, and sent it to friends; a member of his staff, in breach of contractual duty of confidence, leaked it to a newspaper, which published it. Prince sued for breach of confidence and copyright. Court of Appeal *held*, in favour of the Prince’s claim, the information was supplied in breach of confidence and contract, and there was no public interest in its publication. (*As opposed to something of interest to the public.*)

** See the article by David Pannick QC on this case in the Times, 16.1.07, Law Section. ***

Ash v McKennitt; [2006] EWCA Civ 1714;

Loreena McKennit, Canadian folk singer, sought to prevent the publication of a book written by a friend, which contained confidential information; *held*, in favour of injunction to prevent publication, the information was very personal, it had been obtained by means of a close relationship, and McKennitt had always avoided the limelight as far as personal matters were concerned.

R (Animal Defenders International) v Secretary of State for Culture;
[2006] EWHC 3069 Admin;

Animal Defenders, having the object of protection of animals from suffering, wished to make a broadcast a television advertisement against the use of primates for public entertainment. Broadcasting Advertisement Clearance Centre refused to allow it, as the Communications Act 2003 required impartiality and prohibited political advertising and controversy, save at periods of elections. A D argued that the prohibition breached Art 10, and sought a declaration that the Act was incompatible; *held*, refusing the declaration, Parliament in the Communications Act had laid great store on establishing a regime of impartiality, in a widely defined manner, and this was a matter of a social and political judgment for Parliament and the executive, and they would have a surer grasp of democratic needs.

Art 11 Freedom of Assembly and Association

“In 1819, public meetings were generally prohibited. It would have been better if none had been allowed at all, for when a vast but orderly concourse of working men and women assembled on St Peter’s Fields, Manchester, to demand Parliamentary Reform, the magistrates, seized by sudden panic, let loose a charge of yeomanry which killed a dozen and seriously injured hundreds of both sexes...It was called “Peterloo,” because it seemed to cancel the debt of the nation’s gratitude for Waterloo.” *G.M. Trevelyan, Illustrated History of England on Peterloo, 16th August 1819.*

Sorensen v Denmark; 52562/ 99;

Dismissed for not joining a TU; *held* there was a violation; there was a right not to join – note compulsion is not always a violation

Protocol 1, Article 1; Protection of Property

‘Tax legislation lacks charm’.

Intolerable Inquisition? Reflections on the Law of Tax. 1981 Hamlyn Lecture,
by H H Monroe QC

R (Middlebrook mushrooms) v Ag Wages Board; [2004] EWHC Admin 1447;

Mushroom producer applied for judicial review of Ag Wages Order which established manual harvest workers with a minimum wage lower than “standard worker”. In the definition of MHW mushroom were excluded. M argued this was unjustifiable infringement of Art 1 of Protocol 1 and Art 14

Held A requirement to apply a minimum wage was within Art 1 Pro 1; to the extent that a minimum was more than he otherwise would pay it deprived him of his assets. As the Board had failed to establish a justification for the difference re mushroom pickers it was in violation of Art 1.

Hutten-Czapska v Poland; (2006) 42 EHRR 15;

Dwelling occupied in the war by German army, and then by Communist office;

Art 1 Pro 1; rent control scheme; state control of app property.

Court held that the authorities imposed a disproportionate and excessive burden on applicant, especially the consequences which the operation of the rent control scheme entailed for the exercise of her right to peaceful enjoyment. The applicant failed to receive sums necessary for maintenance of her property.

The scheme did not fairly distribute the social and financial burden involved in the reform of the housing supply.

R (Countryside Alliance) v Attorney General; [2006] 1017; C.A.

The Hunting Act 2004 prohibits hunting of wild mammals with dogs; the claimants sought judicial review by way of a declaration that the Act was incompatible with their rights under P 1 Art 1 – as to ‘control or use’; *held*, the legislative aim of the Act was to prevent or reduce unnecessary suffering to wild mammals, together with a moral viewpoint that causing suffering to animals for sport is unethical; the ban was necessary

for this aim, and the ban was proportionate to the removal of the problem it seeks to redress.

Terrorism

A v Home Secretary; [2004] UKHL 56; H L

Power of detention without trial or deportation under Anti Terrorism Crime and Security Act 2001; *held* to be a disproportionate response to the threat, and discriminated against foreign nationals; Art 5 and 14

J J v Home Secretary; [2006] EWCA Civ 1141;
control orders restricting subject to house, and visitors and movement; *held* so severe as to be violation of Art 5

R (S) v Secretary of State for the Home Department; [2006] EWHC 1111 Admin;
Highjackers of flight from Afghanistan in order to flee the Taliban regime.
Home Office refused leave to enter
Immigration Panel overturned that refusal;
Secretary of State composed Discretionary Leave Policy, and delayed a decision and then refused to grant leave
Held
the Secretary of State's action was unlawful and in breach of Art 3 and Art 8.

J J Rowe QC

**Byrom Street Chambers
Manchester**

March 2007

Updates may be found on www.pearsoned.co.uk/hoffmanrowe