

Briefing on ECtHR cases

This briefing provides some examples of the important role played by the European Court of Human Rights (ECtHR) in protecting fundamental human rights. It includes both cases where the ECtHR found the UK to be in breach of the European Convention on Human Rights and cases where no breach was found. It also includes a few important ECtHR cases not involving the UK.

1.1 Recent ECtHR cases won by the applicant(s) against the UK

- Eweida v UK (2013) – an employer's policy banning employees from wearing a cross necklace for corporate image reasons was held to have infringed Ms Eweida's Article 9 rights to freedom of thought, conscience and religion.¹
- AD v UK (2010) – parents' right to family life was breached when their child with rib fractures was put into foster care, but it was later discovered that a genetic disease made his bones brittle. The local authorities' failure to consider less intrusive measures or to carry out a risk assessment made their actions disproportionate to the legitimate aim of protecting the child from harm.
- Gillan v UK (2010) - The broad powers of authorisation, confirmation and stop and search under s44-45 Terrorism Act 2000 were not in accordance with the law, in violation of the Article 8 right to respect for private life.
- Financial Times v UK (2009) – found a breach of Article 10 when journalists were ordered to deliver up a leaked document concerning a possible takeover of a company. The company's interests were outweighed by the public interest in the protection of journalists' sources.
- HL v UK (2004) – where an autistic man spent time in a psychiatric hospital as an "informal patient" and lacked capacity to consent or object to medical treatment, a breach of the right to liberty was found due to the lack of procedural safeguards for such patients. This case led to the Deprivation of Liberty Safeguards being inserted into the Mental Capacity Act 2005, to provide legal protection for vulnerable people in such circumstances.
- Goodwin v UK (2002) – the lack of legal recognition given to transsexual people led to a breach of the right to family life and to marry. This case (along with a domestic HRA case²) led to legal recognition of the gender reassignment for transsexual people.
- Z v UK (2001) – a breach of Article 3 was found where four children had been subjected to abuse, but social services only acted five years after the first of several complaints. The ECtHR ruled that the State had a duty under Article 3 to protect children from known ill treatment.
- Dudgeon v UK (1981) – a breach of the right to respect for private and family life was found, which led to homosexuality in Northern Ireland being decriminalized

1.2 Privacy/intercept cases

This section briefly explains the impact of ECtHR decisions (and the HRA) on the issue of privacy and intercept of communications.

¹ See below in respect of the other applicants in the case who were unsuccessful.

² *Bellinger v Bellinger* [2003] UKHL 21

Malone v UK (1984)

- An antique dealer's phone was tapped when he was wrongly suspected of handling stolen goods. The ECtHR found the lack of any legal regulation of state interceptions of communications was a breach of the right to respect for private life.
- This led to statutory regulation of intercepting communications for the first time in the UK (the Interception of Communications Act 1985).

Halford v UK (1997)

- The calls of the Assistant Chief Constable of Merseyside Police (Alison Halford) were hacked on the internal phone system at her place of work. This was not covered by the Interception of Communications Act 1985, which only covered communications made on the *public* telecommunications system. The ECtHR found a breach of Article 8.
- Following this case, and as part of the preparation for the implementation of the HRA, the government introduced the Regulation of Investigatory Powers Act (RIPA) shortly before the HRA came into force in October 2000. This Act regulated interception of communications on all private networks, including mobiles and voicemail.
- This Act was used to prosecute Glenn Mulcaire for voicemail hacking in 2005-6 - the private investigator hired by the News of the World.

1.3 Recent ECtHR cases won by the UK government

- Eweida v UK (2013) – restrictions on the rights of an NHS nurse who wanted to wear a cross necklace to work and a Relate sex therapist and Local Authority registrar who both refused to deal with same-sex couples were justified. The UK enjoys room for manoeuvre in how it responds to health and safety considerations and implements anti-discrimination policies respectively.
- Vinter v UK (2012) – 'whole life' sentences for murder with no hope of release, except at the Secretary of State's discretion on compassionate grounds, was not a breach of Article 3
- Mosley v UK (2011) - Article 8 did not require States to impose a legally binding requirement on the media to pre-notify the subject of their articles which disclosed private material
- Al-Khawaja & Tahery v UK (2010) - where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6
- Onur v UK (2009) – the deportation of a Turkish national who had lived in the UK for 19 years from the age of 11 and who had a British partner and children, would not breach Article 8, taking into account his convictions for serious offences and that relocating the family to Turkey would not be exceptionally difficult.
- N v UK (2008) – the removal of an alien who was suffering from a serious illness (in this case AIDS) to a country where medical facilities were inferior might raise an issue under Article 3, but only in a very exceptional case (not in this case)
- Saadi v UK (2008) which endorsed the short-term detention of asylum seekers in suitable conditions to enable asylum claims to be processed speedily
- Evans v UK (2007) – a wide margin of appreciation was granted to the UK on how to decide the sensitive moral and ethical issues involved where a man withdrew his consent to

IVF and requested the stored embryos to be destroyed. No breach of the woman's right to family life was found.

1.4 Recent important non-UK cases at ECtHR

- Rantsev v Cyprus and Russia (2010) found that human trafficking fell within the scope of Art 4 (on forced labour) and clarified positive obligations on states to investigate allegations of trafficking and implement measures to prevent it.
- Opuz v Turkey (2009) in which the ECtHR ruled that the State has a duty under Articles 2, 3 and 14 to respond to reports of domestic violence and to protect its victims and deter its perpetrators with effective legislation.
- Saadi v Italy (2008) in which the ECtHR ruled that the absolute nature of the right to be free from torture meant that it would be a breach of Article 3 to deport a foreign national to a country where there is a real risk of them being tortured, irrespective of their conduct.