

An Garda Síochána



The European Convention on Human Rights Act 2003

A Short Guide



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The European Convention on Human Rights Act, 2003

Short Guide

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INTRODUCTION

The European Convention on Human Rights Act 2003, which came into force on 31 December 2003, provides that “every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions.”

The relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (including additional articles – known as “Protocols” – that apply to Ireland) are set out in Schedules 1 to 5 of the 2003 Act.

An Garda Síochána is an “organ of the State” for the purposes of the 2003 Act and this short guide outlines the key principles and the content of the State’s obligations under the European Convention on Human Rights insofar as they relate to the operational activities of the Gardaí.

KEY PRINCIPLES OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

(1) **Legality**

Is there a clear basis in law for action by the Gardaí? All actions by organs of the State must have a clear basis in law.

(2) **Necessity**

Is action by the Gardaí strictly necessary in order to resolve a particular problem or deal with a threat?

(3) **Proportionality**

Can it be demonstrated that any action taken by Gardaí is proportionate to the threat or problem that they seek to prevent?

(4) **Accountability**

Can it be shown that Garda action is sufficiently open to scrutiny by the public and other authorities (such as the Garda Ombudsman Commission and the Garda Inspectorate) in order to ensure that the Gardaí are accountable in practice, as well as in theory?

(5) **Non-discrimination**

What steps have been taken to ensure that Garda action will avoid discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status?

Article 2

Right to life

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.¹*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this article when 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.*

Explanation of Article 2

Article 2 bans unlawful killing by the agents of the State, including the Gardaí. The exceptions set out in Article 2 (2) (a) to (c) only apply if the State can show that the force which caused death was 'no more than absolutely necessary'. The onus is on the State, not on the victim / victim's next-of-kin to demonstrate that this was the case.

Article 2 also places the Gardaí under a duty to take positive steps to protect life if they knew or ought to have known of a real and immediate risk to the life of an identified person due to the criminal acts of another person.

Examples of Operational Policing Areas covered by Article 2

- (a) Arrest.
- (b) Use of lethal and potentially-lethal force (all use of force is potentially lethal).
- (c) Treatment of detained persons.
- (d) Use of handcuffs and other means of restraint.

¹ This text has been updated by "Protocol 13" to the European Convention on Human Rights, which outlaws the death penalty completely. The text of Protocol 13 can be found at the end of this booklet.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation of Article 3

Article 3 absolutely forbids ill-treatment. The European Convention on Human Rights allows no exceptions to this rule, even in times of war or public emergency.

Ill-treatment is prohibited by Article 3 regardless of the way in which a victim (or potential victim) may have behaved. This is particularly relevant as regards persons who are suspected or convicted of offences related to terrorism, or who are believed to constitute a threat to national security. Nothing that such persons may have done can be used to justify ill treating them, or exposing them to the risk of being ill-treated.

Examples of Operational Policing Areas covered by Article 3

- (a) Arrest.
- (b) Use of force.
- (c) Treatment of detained persons.
- (d) Use of handcuffs and other means of restraint.

Article 4

Prohibition of slavery and forced labour

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.*
3. *For the purpose of this article the term “forced or compulsory labour” shall not include:*
 - a. *any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - b. *any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
 - c. *any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - d. *any work or service which forms part of normal civic obligations.*

Explanation of Article 4

Article 4 is an absolute prohibition of slavery and forced labour. This prohibition applies even in times of war or public emergency.

Examples of Operational Policing Areas covered by Article 4

- (a) Combating trafficking in human beings
- (b) Tackling the sexual exploitation of vulnerable people.

Article 5

Right to liberty and security

1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
 - a. *the lawful detention of a person after conviction by a competent court;*
 - b. *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - c. *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - d. *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - e. *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - f. *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.*
Release may be conditioned by guarantees to appear for trial.
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

Explanation of Article 5

Article 5 (1) (a) to (f) lists the six reasons for which people can lawfully be deprived of their liberty by agents of the State, including the Gardaí. This is an *exhaustive* list, in other words, to deprive a person of her or his liberty for any other reason will be unlawful.

Article 5 (2) to (5) outline the rights that must be made available to persons detained by the Gardaí.

Examples of Operational Policing Areas covered by Article 5

- (a) Arrest: (i) grounds for arrest;
(ii) information about arrest.
- (b) Detention or continued detention.
- (c) Charging with offences.
- (d) Bail (i) Garda bail conditions;
(ii) court bail conditions.
- (e) Compensation for unlawful arrest/imprisonment.

Article 6

Right to a fair trial

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - a. *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - b. *to have adequate time and facilities for the preparation of his defence;*
 - c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

- d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- e. *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

Explanation of Article 6

Article 6 sets out the *minimum* rights of persons charged with a criminal offence, including the rights to a fair trial, to be presumed innocent until proven guilty and to have adequate time and facilities to prepare a defence.

Examples of Operational Policing Areas covered by Article 6

- (a) Good practice in interviewing suspects/prisoners.
- (b) Allowing interviewed persons access to legal advice.
- (c) Collection of evidence.
- (d) Recording of evidence.
- (e) Documentation of evidence.
- (f) Admissibility of evidence.
- (g) Disclosure of evidence.
- (h) Correct charging procedures.
- (i) Fair trial rights.

Article 7

No punishment without law

1. *No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
2. *This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations.*

Explanation of Article 7

Article 7 prohibits punishment as a result of retrospective criminal laws. In other words, a person should not be convicted of a criminal offence for engaging in behaviour that was not illegal when it took place, nor sentenced to a more severe penalty than applied at the time of their act.

This Article of the Convention should have few, if any implications for operational policing.

Article 8

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.*

Explanation of Article 8

Article 8 (1) recognises that people have a right to privacy as regards their private life, family life, home and correspondence.

The Gardaí may interfere with these privacy rights (e.g. through surveillance activities), but only if they can demonstrate that the interference is lawful, necessary, and proportionate and falls within one of the exceptions set out in Article 8 (2).

Examples of Operational Policing Areas covered by Article 8

- (a) Covert surveillance.
- (b) Use of CCTV.
- (c) Taking photographs.
- (d) Interception of communications.
- (e) Data protection.
- (f) Personal bodily integrity.
- (g) Private life.
- (h) Family life.

Article 9

Freedom of thought, conscience and religion

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

Explanation of Article 9

Article 9 (1) protects freedom of thought, conscience and religion. It provides that people should be able to practice their religion, or otherwise celebrate / demonstrate their beliefs.

The Gardaí can only restrict these freedoms if they can demonstrate that the restriction is lawful, necessary and proportionate in order to achieve one of the aims set out in Article 9 (2).

Examples of Operational Policing Areas covered by Article 9

- (a) Public and private meetings.
- (b) Marches.
- (c) Demonstrations.
- (d) Incidents on the public highway.
- (e) Exchange of information and intelligence.

Article 10

Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Explanation of Article 10

Article 10 covers the right to freedom of expression. Because this is one of the basic foundations of a democratic society, Article 10 (1) protects freedom of expression not only where it concerns information / ideas generally thought to be inoffensive, but also as regards information / ideas that offend, shock or disturb the State or any sector of the population.

Article 10 (2) recognises that freedom of expression should be exercised in a responsible manner, and lists a number of reasons for which the State may place restrictions on the exercise of this right. However, any such restriction must be lawful, necessary and proportionate.

Examples of Operational Policing Areas covered by Article 10

- (a) Public and private meetings.
- (b) Marches.
- (c) Demonstrations.
- (d) Incidents on the public highway.
- (e) Exchange of information and intelligence.

Article 11

Freedom of assembly and association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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 article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

Explanation of Article 11

Article 11 is concerned with right to associate with others (including through membership of a trade union) and to assemble peacefully. It includes a right to demonstrate, and the mere fact that a demonstration *may* result in disorder is not a sufficient reason for it to be banned.

However, the Gardaí may place restrictions on demonstrations and other meetings for one of the reasons set out in Article 11 (2), provided that they can show that any such restriction is lawful, necessary and proportionate.

Examples of Operational Policing Areas covered by Article 11

- (a) Public and private meetings.
- (b) Marches.
- (c) Demonstrations.
- (d) Incidents on the public highway.
- (e) Exchange of information and intelligence.

Article 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

This Article of the Convention is self-explanatory and should have few, if any implications for operational policing.

Article 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

This Article of the Convention makes clear that the State must provide an effective remedy to every person whose rights have been violated, even if his or her rights have been violated by a member of An Garda Síochána acting in his or her official capacity.

Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Explanation of Article 14

Article 14 imposes an overarching obligation on the Gardaí to protect the rights and freedoms in the Convention in a non-discriminatory way. This does not mean that everyone with whom the Gardaí come into contact must be treated in exactly the same way, but rather that any difference in treatment must have an objective and reasonable justification, otherwise it will be considered discriminatory.

Examples of Operational Policing Areas covered by Article 14

Any difference of treatment of persons must be justified in terms of diversity, and be lawful, necessary and proportionate.

**Protocol No. 1
Article 1**

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Explanation of Protocol No. 1, Article 1

This provision recognises that people have a right not to be deprived of their property.

However, the Gardaí may seize property (e.g. if it is thought to be evidence of the commission of a criminal offence / the proceeds of crime) provided that they can show that the seizure is lawful, necessary and proportionate.

Examples of Operational Policing Areas covered by Article 1 of Protocol No. 1

- (a) Seizure of property.
- (b) Confiscation of land.
- (c) Seizure of Assets.

**Protocol No. 1
Article 2**

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

This Article of Protocol No. 1 to the Convention should have few, if any implications for operational policing.

**Protocol No. 1
Article 3**

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

This Article of Protocol No.1 is self-explanatory.

Examples of Operational Policing Areas covered by Article 3 of Protocol No. 1

- (a) Public and private meetings.
- (b) Marches.
- (c) Demonstrations.
- (d) Policing elections.

**Protocol No.4
Article 1**

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

This Article of Protocol No. 4 to the Convention is self-explanatory and should have few, if any implications for operational policing.

**Protocol No. 4
Article 2**

Freedom of movement

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
4. *The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.*

Explanation of Protocol No. 4, Article 2

This Article of Protocol No. 4 deals with the right to freedom of movement within a country, and the right to leave a country. These rights are available to everyone lawfully present in Ireland, no matter what their own nationality.

The Gardaí may place restrictions on the exercise of these rights, but only if those restrictions can be shown to be lawful, necessary and proportionate.

Examples of Operational Policing Areas covered by Article 2 of Protocol No. 4

- (a) Arrest (i) grounds for arrest;
 (ii) information about arrest.
- (b) Detention & continued detention.
- (c) Charging with offences.
- (d) Bail (i) Garda bail conditions;
 (ii) court bail conditions.
- (e) Compensation for unlawful arrest/imprisonment.
- (f) Enforcement of Immigration Legislation

**Protocol No.4
Article 3**

Prohibition of expulsion of nationals

1. *No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.*
2. *No one shall be deprived of the right to enter the territory of the state of which he is a national.*

Explanation of Protocol No. 4, Article 3

This Article of Protocol No. 4 provides that a State cannot expel, or refuse to admit, its own nationals. Consequently, in Ireland, these rights apply only to people of Irish nationality.

With the exception of lawful extradition, there are no circumstances in which it is permissible to expel an Irish national from Ireland, or to refuse to allow an Irish national to enter Ireland.

Examples of Operational Policing Areas covered by Article 3 of Protocol No. 4

Enforcement of Immigration Legislation

**Protocol No. 4
Article 4**

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Explanation of Protocol No. 4, Article 4

Collective expulsion occurs when persons are expelled with others, without each of their cases having received individual attention. This practice is prohibited by Protocol No. 4, Article 4.

Examples of Operational Policing Areas covered by Article 4 of Protocol No. 4

Enforcement of Immigration Legislation

**Protocol No. 7
Article 1**

Procedural safeguards relating to expulsion of aliens

1. *An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:*
 - a. *to submit reasons against his expulsion,*
 - b. *to have his case reviewed, and*
 - c. *to be represented for these purposes before the competent authority or a person or persons designated by that authority.*
2. *An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.*

Explanation of Protocol No. 7, Article 1

This Article of Protocol No. 7 extends procedural safeguards to people who are not Irish nationals, but who are lawfully resident in the State.

Article 1 (2) provides that these safeguards need not have suspensive effect (in other words, they could be exercised *after* the person has been expelled). However, other provisions of the Convention – and, in particular, Article 3 – absolutely prohibit the expulsion of a person to a country where they could face torture or inhuman or degrading treatment or punishment.

Examples of Operational Policing Areas covered by Article 1 of Protocol No. 7

Enforcement of Immigration Legislation

**Protocol No. 7
Article 2**

Right of appeal in criminal matters

1. *Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.*
2. *This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.*

This Article of Protocol No. 7 to the Convention should have few, if any implications for operational policing.

**Protocol No. 7
Article 3**

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

This Article of Protocol No. 7 to the Convention should have few, if any implications for operational policing.

**Protocol No. 7
Article 4**

Right not to be tried or punished twice

1. *No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
3. *No derogation from this Article shall be made under Article 15 of the Convention.*

This Article of Protocol No. 7 to the Convention should have few, if any implications for operational policing.

**Protocol No. 7
Article 5**

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

This Article of Protocol No. 7 to the Convention should have few, if any implications for operational policing.

**Protocol No. 13
Article 1**

Abolition of the death penalty

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

This Article of Protocol No. 13 to the Convention updates Article 2 to the Convention. It should have few, if any implications for operational policing.

This short guide to the European Convention on Human Rights Act 2003 has been produced by An Garda Síochána and the Irish Council for Civil Liberties, 9-13 Blackhall Place Dublin 7.
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