

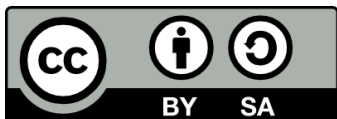


European Human Rights Law



The right to Personal Integrity

Teacher: Lina Papadopoulou,
Ass. Prof. of Constitutional Law

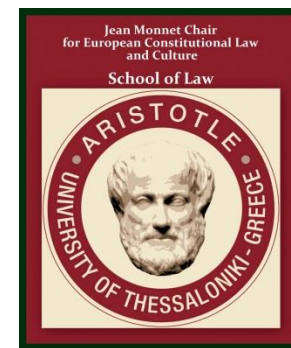


ΕΠΙΧΕΙΡΗΣΙΑΚΟ ΠΡΟΓΡΑΜΜΑ
ΕΚΠΑΙΔΕΥΣΗ ΚΑΙ ΔΙΑ ΒΙΟΥ ΜΑΘΗΣΗ
επένδυση στην κοινωνία της γνώσης

ΥΠΟΥΡΓΕΙΟ ΠΑΙΔΕΙΑΣ & ΘΡΗΣΚΕΥΜΑΤΩΝ, ΠΟΛΙΤΙΣΜΟΥ & ΑΘΛΗΤΙΣΜΟΥ
ΕΙΔΙΚΗ ΥΠΗΡΕΣΙΑ ΔΙΑΧΕΙΡΙΣΗΣ

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ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΩΝΙΚΟ ΤΑΜΕΙΟ

Με τη συγχρηματοδότηση της Ελλάδας και της Ευρωπαϊκής Ένωσης



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Bibliography

- *Robert Uerpmann-Wittzack, Personal Rights and the Prohibition of Discrimination in Dirk Ehlers, European Fundamental Rights and Freedoms, De Gruyter Recht, Berlin, 2007, pages 81 ff.*



Personal Integrity (1/14)

1. Article 3 of the ECHR.

- Prohibits torture, inhuman or degrading treatment and punishment.
- See also Article 3 (1) and 1 of the Charter of Fundamental Rights of the EU.



Personal Integrity (2/14)

- **Definition of torture:** *“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”*



Personal Integrity (3/14)

- *Detention* on death for many years could interfere with Article 3 ECHR in the light of the conditions of detention (*Soering case 1989*).
- The ECrtHR extended the scope of protection of **Article 3** of the ECHR in **deportation cases**, if → persecution by state or by private groups in home state.



Personal Integrity (4/14)

- Violation of art. 3 of the ECHR → if the state cannot explain why one person's health has worsen after taken into custody.
- An **extradition or a deportation** interferes with EConvHR when → inhuman/degrading treatment.
- Limitations in Article 3 EConHR can be only exceptionally accepted !!
- The *absolute character* of the right to human dignity.



Personal Integrity (5/14)

- Procedures before the ECtHR have only to do with individual violations.
- An important step: **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)** → offers additional Protection.



Personal Integrity (6/14)

2. Article 2 ECHR (The right to Life).

- Article 2 ECHR protects Human Life.
- Even unborn life must be somehow protected.
- Article 2 (1) ECHR does **not** contain the negative aspect of life (**the right NOT to live**).
- Restriction of euthanasia → to protect the right to life of the other person.



Personal Integrity (7/14)

2. Article 2 ECHR (The right to Life).

- **Military attacks** which kill people do not fall into the scope of protection of article 2 ECHR.
- HOWEVER, jurisdiction → in cases of military occupation when the Convention state controls the state power in a foreign area.
- ✓ An example in ECtHR → *Turkey violated article 2 when intruded into Northern Cyprus.*



Personal Integrity (8/14)

2. Article 2 ECHR (The right to Life).

- **Killings** attributed to the state → prohibited.
- The burden of proof that the state did not occur the death (example: police custody) → belongs to the state.
- If death is caused by private conduct or natural events → this does not fall under the scope of art.2 ECHR.
- **Extradition** of a person, if the person faces a death sentence in the country of destination → must be regarded as an interference.



Personal Integrity (9/14)

2. Article 2 ECHR (The right to Life).

- **Article 1 of the 6th Prot ECHR (1983)** abolishes death penalty (see also 13rd Protocol).
- **Prohibition of death penalty** → absolute character.
- ❖ **Restrictions:**
 - **Article 2 (2) (a) ECHR:** *“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”* → killing is justified if → **absolutely necessary** for defence (the principle of proportionality is here important !!)



Personal Integrity (10/14)

2. Article 2 ECHR (The right to Life).

- **Article 2 (2) (b) and (c) ECHR:** *“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**: (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”.*
- **Article 15 (2):** *“No derogation from Article 2, except in **respect of deaths resulting from lawful acts of war**, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision”.*



Personal Integrity (11/14)

2. Article 2 ECHR (The right to Life).

- The state must also protect life by means of criminal law.



Personal Integrity (12/14)

3. ARTICLE 14 ECHR- (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.”

- Article 14 → complementary character.
- Prohibited discrimination only exists if the differential treatment is **not justified with a legitimate aim, which is proportionate.**



Personal Integrity (13/14)

3. ARTICLE 14 ECHR- (Prohibition of discrimination).

- Justification requirements become stricter if → “inalienable” characteristics of a person.
- EQUALITY: 12 th Protocol.
- Art. 5 of the 7th Prot ECHR guarantees equality between spouses.



Personal Integrity (14/14)

3. ARTICLE 14 ECHR- (Prohibition of discrimination).

- **Procedural guarantees of Art.6 ECHR** → contain the strongest equality characteristics.
- An important article: 6 (3) (e) → a right to free interpreter in criminal proceedings.
- The right to a fair trial → aspect of equality !



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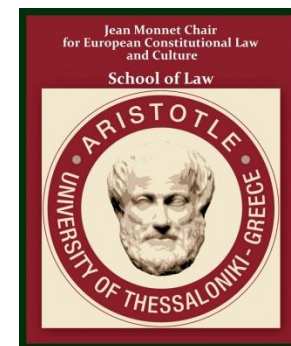
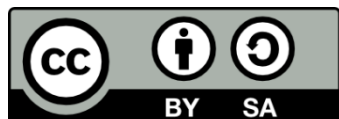




The End

Ioannis Yannakelos

Thessaloniki, Spring 2013-2014





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ΠΑΝΕΠΙΣΤΗΜΙΟ
ΘΕΣΣΑΛΟΝΙΚΗΣ

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