

HIV, Aids and Discrimination: The Role of the European Convention

Key Convention Rights



- ❑ Article 3
- ❑ Article 8
- ❑ Article 14

Article 3



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



- Absolute right
- High threshold
- Right to treatment and appropriate health care (*D v UK*; *Price v UK*; *BB v France*; *Karara v Finland*; *SCC v Sweden* ; *Ndangoya v Sweden* ; *Amegnigan v Netherlands*)

Article 8



- (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 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.

- physical and personal integrity and identity covered, including discrimination on the grounds of a person's disability status or sexuality will fall within the scope of Article 8 (*Botta v Italy*; *Smith & Grady v UK*; *Pretty v UK*)

- Privacy rights (*Smith & Grady v UK*)
- Positive obligations; Fair balance; direct and immediate link between measures sought by an applicant and latter's private and/or family life (*Botta*).

- Discrimination based on status (*Smith & Grady*; *Botta*)
- Right to chose treatment (*Glass v UK*)
- Criminalising sexuality/sexual acts (*Dudgeon v UK*)

Article 14



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.

- ❑ Other status: disability/health status
(*Botta*)
- ❑ Ambit test
- ❑ Direct and indirect discrimination;
reasonable accommodations (*Thlimmenos*)

Protocol No 12 (2005)



- The enjoyment of any right set forth by law 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.
- No one shall be discriminated against by any public authority on any ground such as those mentioned.

- Equality rights in legal rights
- Freestanding against public authorities

- ❑ UN Convention on the rights of persons with disabilities
- ❑ to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’

- 'respect for inherent dignity, individual autonomy including the freedom to make ones own choices, and independence of persons'
- 'full and effective participation and inclusion in society' and 'respect for difference and acceptance of disability as part of human diversity and humanity.'

‘prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds’ and to ‘take all appropriate steps to ensure that reasonable accommodation is provided’

Positive Duties?



- Inherent in Articles 8 and 14
- Domestic duties?

- Article 6, ECHR ('fair hearing')
- Practical and effective right
- Legal aid/support where lawyer indispensable for effective access (*Airey v Ireland*)