

Classification of rights in the ECHR

The rights contained within the **European Convention on Human Rights** can be categorised as either **absolute**, **limited** or **qualified**.

- **Absolute rights** – these are the strongest rights. The State cannot deviate from these rights; they can never legally be breached e.g., the right to a fair trial (article 6 ECHR).
- **Limited rights** – the State can deviate from these rights but only in the prescribed limitations laid down in the right e.g., the right to liberty (article 5 ECHR).
- **Qualified rights** – these are the weakest rights and can be removed when ‘prescribed by law, necessary and proportionate in a democratic society in order to fulfil a legitimate aim.’ They may be restricted to protect the rights of others or for the public interest e.g., freedom of expression (article 10 ECHR). Case law generally centres around whether the removal of the right is justifiable and often involves balancing one right against another.

Article 8 – *The right to respect for private and family life, home and correspondence*

- **Qualified right**
- There are four expressly protected interests under Article 8:
 1. private life;
 2. home;
 3. family;
 4. correspondence.
- Legitimate reasons for their interference include:
 - In the interests of national security.
 - Public safety or economic wellbeing of the country.
 - For the prevention of disorder or crime.
 - For the protection of health or morals.
 - For the protection of the rights and freedoms of others.

Article 8 contains both **negative** and **positive obligations**. The state is under a negative obligation not to interfere with privacy rights, but in addition, article 8 includes a positive obligation on the state to act in a manner which protects an individual’s right to private and family life - **(1) X (2) Y v the Netherlands (1985)**.

LINK: There are links with the topic of defamation, breach of confidence and interception of communication. Article 8 is often balanced against article 10.

Article 10 – *freedom of expression*

- **Qualified right**
- Includes - *freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*
- Legitimate reasons for their interference include:
 - 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.

Section 12 Human Rights Act 1998 provides that the courts must have ‘special regard’ to the right of freedom of expression in any case where it is in issue, and the public interest in disclosure of material which has journalistic, literary or artistic merit is to be considered.

For example, in **PJS v News Group Newspapers (2012)** they held that neither Article 10 (freedom of expression) nor Article 8 (privacy) has preference over the other.

LINK: There are links with the topic of defamation, breach of confidence, freedom of assembly, interception of communication and obscenity. Article 10 is often balanced against article 8, above, but also article 6 when considering contempt of court laws.

Article 11 – *freedom of assembly and association*

- **Qualified right**
- Article 11 has two elements – the right to freedom of assembly *and* the right to freedom of association.
- Legitimate reasons for their interference include:
 - 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.

LINK: There is a link with the topics of public order and freedom of expression. There is a clear balance to be struck between articles 10 and 11.