

- (b) *Individual petitions to the ECtHR.* Individuals who allege that their Convention rights have been breached as a result of UK law may start their own proceedings against the UK in Strasbourg. However, it must be shown that any domestic remedies have first been exhausted. Furthermore, there is a time limit, requiring the petition to be made within six months of the final UK decision (this will usually be the decision of the highest UK court having jurisdiction).



*European Court of Human Rights*

## 2 The general principles of the Convention

You will be looking in more detail at Convention rights in Units 8 to 10. However, since incorporation of the Convention affects the principles of judicial review, it is necessary to look at the general principles of the Convention before we go further.

### 2.1 Convention rights

We would like you to begin by using the next activity to get an overview of Convention rights.

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#### ACTIVITY 4

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##### **Convention rights** (allow 30 minutes)

The Human Rights Act 1998 incorporates Articles 2 to 12, 14 and 16 to 18 of the Convention, Articles 1 to 3 of the First Protocol, and Articles 1 and 2 of the Sixth Protocol. However, it does not incorporate Articles 1, 13 or 15.

- 1 Please look at the text of the Convention in *Allen and Thompson*, p. 411 or on the website of the European Court of Human Rights ([www.echr.coe.int](http://www.echr.coe.int)). **Please use the following table to identify the Articles which guarantee rights and jot down in a few words what rights you think they protect.** (Note that not all Articles guarantee rights – some deal with procedures and remedies.)
- 2 **Why do you think Articles 1, 13 and 15 have not been incorporated?**



Article	Right?
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12	
14	
16	
17	
18	
<b>Protocol 1</b>	
1	
2	
3	
<b>Protocol 6</b>	
1	
2	

**COMMENT****1** The incorporated Convention rights are as follows:**Article Right**

2	Life
3	Freedom from torture and inhuman or degrading treatment or punishment
4	Freedom from slavery
5	Liberty and security of person
6	Right to a fair trial
7	Criminal law and penalties not to be retrospective
8	Respect for private and family life, home and correspondence
9	Freedom of thought, conscience and religion
10	Freedom of expression
11	Freedom of peaceful assembly and association
12	Right to marry and found a family

## Protocol 1

1	Peaceful enjoyment of possessions
2	No denial of right to education
3	Right to free elections by secret ballot

## Protocol 6

1	Abolition of death penalty
2	Death penalty in time of war

Articles 14 to 18 deal with the way convention rights are applied, as follows:

14	Prohibition of discrimination in relation to Convention rights
16	Restrictions on political activities of aliens permitted
17	Rights not to be abused
18	Limits on use of restrictions on rights.

**2** Articles not incorporated:

- Article 1 is not incorporated because it deals with the obligations of States under the Convention, rather than provisions enforceable in national courts.
- Article 13 deals with the right to an effective remedy before national courts. Presumably this is not incorporated because the Government took the view that the requirements of that Article would be met by s. 8 of the HRA (see paragraph 3.7 below). The result is that if a victim of a breach wishes to argue that UK law does not give him or her an effective remedy, he or she must petition the ECtHR.
- Article 15 deals with the right of a State to derogate from the Convention (see below for the effect of this). The Government presumably took the view that the exercise of the right to derogate was a matter which should concern only the ECtHR and should not be subject to challenge in national courts.
- The UK has not ratified Protocol 4 (freedom of movement) as a matter of international law, and the Act accordingly does not incorporate it.

Now that you have looked at the contents of the Convention and the rights which are incorporated into UK law, we would like you to use the next activity to identify the sort of cases which would raise Convention issues.