

ATLEU/Hogan Lovells
Anti-Trafficking Conference
Fifth Panel: Compensation
Civil Claims against the State

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Civil Claims v. State

Overview

- ❑ Breach of VOT's Human Rights
 - International
 - National
- ❑ Other legal remedies
- ❑ Public Funding
- ❑ Qs

Legal Framework:

Basis of VOT's Human Rights

- ❑ **International:** European Convention Human Rights 1950 ('Convention') & its constituent 'Articles'. Convention/Articles apply to all member states of the Council of Europe, inc. UK. Overseen by European Court of Human Rights in Strasbourg
- ❑ **National:** Convention/Articles apply (only) to Public Authorities (PA's) in UK via the **Human Rights Act** ('HRA') 1998. Overseen by County & High Courts
- ❑ **HRA** allows individuals to claim financial compensation agst PA's as part of claim for 'just satisfaction' of breach of his/her human rights in County or High Court.
- ❑ **Plus** declaratory relief, **vindication**, & lessons learned (via ADR)

Common HRA claims by VOTs

Breach of.....

❑ **ARTICLE 3 of Convention**

Prohibition against torture

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

❑ **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.....

.....

❑ **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 wellbeing 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.

How can a PA breach Articles 3/4?

Art 3/4 impose on PA:

- ❑ A duty **not** to torture, degrade, traffic, enslave, force labour etc ('negative duty') e.g. *ZH v Commissioner of Police for the Metropolis*
- ❑ A duty to **prevent** the future or on-going risk of one member of the public subjecting another member of the public to torture/degrading treatment/trafficking/slavery/forced labour etc.
Note: the risk must be *real & immediate*; and the PA must have known or *ought* to have known about this risk. This is a high test as this duty requires urgent action by the PA: *Osman v UK* ('protective' or '*Osman*' duty)
- ❑ A duty to effectively **investigate** & where appropriate to **prosecute** a credible allegation of torture/degrading treatment/trafficking/slavery/forced labour etc] to an identifiable victim.
This is not so high a test as this duty requires an effective investigation only as a matter of *promptness* by the PA. (*Rantsev v Cyprus/Russia & OOO v Met & DSD v Met*)

RECAP of VOT'S RIGHTS UNDER HRA (Arts 3/4)

- ❑ Protection from abusers (*Osman*)
- ❑ Investigation of abusers (*Rantsev/ OOO*)
- ❑ Prosecution of abusers - (*DSD*)
- ❑ Victim Support – *emerging duty (OOO & DSD)*

Legal Framework contd.

Other Legal Remedies

Police

- Breach of HRA (Articles 3,4 or 8 of Convention) e.g. failure to remove VOT from a trafficker; or to investigate a trafficker
- False imprisonment
- Assault & battery (e.g. handcuffing)
- Breach of Data Protection Act 1998
- Misfeasance in public office
- Note: usually *not* tort of negligence (as immunity from being sued for most core functions on public policy grounds). Though HRA still an option

Home Office (e.g. if VOT wrongfully detained in Immigration Detention)

- Similar to police

CPS

- Breach of HRA e.g. if VOT prosecuted alongside her traffickers for cannabis cultivation
- Breach of Data Protection Act 1998
- Misfeasance in public office
- Note: *not* negligence (as immunity from being sued for most core functions)

Social Services

- Breach of HRA 1998** (Articles 3, 4 &/or 8) e.g. failing to protect VOT in care or school from re-trafficking
- Negligence** [Requires duty + breach + damage (specific type & foreseeable)] . Note immunity from being sued in negligence does **not** apply to local authorities

CICA

Public Funding

- ❑ Public funding (legal aid) is available to VOTs to pursue compensation claims against PAs
- ❑ Solicitor must have correct contract with LAA
- ❑ Means test: essentially benefit levels
- ❑ Merits test: depends on strength of evidence
- ❑ Cost/compensation ratio test: usually satisfied, as trafficking such a devastating experience