

## Article 3 ECHR

### Prohibition of torture, inhuman & degrading treatment or punishment

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## **Article 3 ECHR**

### **Article 3      No-one shall be subjected to torture or to inhuman or degrading treatment or punishment**

Article 3 has been applied by the European Court, and Commission, of Human Rights in a large number of immigration and asylum related cases. With the coming into force of the Human Rights Act 1998 it is likely that Article 3 will be argued in both immigration and asylum cases.

### **Strasbourg Jurisprudence**

This factsheet does not include all ECHR Article 3 cases, but does include many of the Article 3 cases which will be cited before Adjudicators and the IAT when the Human Rights Act 1998 comes into force. The cases are arranged alphabetically for easy reference.

### **The absolute nature of Article 3**

Article 3 ECHR is often described as enshrining one of the fundamental values of democratic societies. It prohibits torture, inhuman and degrading treatment and punishment in absolute terms. This means that Article 3 cannot be breached even when there is a state of emergency (as for example in *Ireland v UK*) or where the “victim” has been involved in serious criminal activity or threatens national security (for example *Chahal v UK*, *H.L.R v France*, *Ribitsch v Austria*, *Ahmed v Austria*). In *H.L.R v France* the principle was stated very clearly: Article 3 ‘prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct’.

### **What is torture, inhuman or degrading treatment or punishment?**

Not all ill-treatment will fall within the scope of Article 3. The European Court has often stated that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. However, the assessment of the minimum level of severity necessary for a violation of Article 3 will vary. In *Ireland v the UK* the Court stressed that the assessment of the minimum level of severity of ill-treatment which would breach Article 3 is “relative, it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects, and in some cases, the sex, age and state of health of the victim, etc” (see also: *Tekin v Turkey*, *Selcuk and Asker v Turkey*, *Cruz Varas v Sweden*).

Article 3 may thus be violated by a wide variety of treatments and punishments ranging from the relatively unsevere to very severe. Whether the treatment or punishment is found to be degrading, inhuman or actually to constitute torture there will be a violation of Article 3 which is prohibited by ECHR. Indeed in some cases the European Court has not made a specific finding as to whether the treatment specifically constitutes torture, inhuman or degrading treatment or punishment (see for example *Chahal v the UK*, *Ahmed v Austria*). The European Court has also stated that Article 3, in conjunction with Article 1, requires that state authorities should undertake an effective official investigation where a person alleges a breach of Article 3 by State agents (see *Assenov v Bulgaria*).

## **Torture**

In ECHR jurisprudence there have been few findings of torture; this may be because a finding of inhuman or degrading treatment or punishment is sufficient to constitute a violation of Article 3. In fact, previous to the case of *Ahydin v Turkey*, there had been no specific findings of torture by the European Court (in the Greek case the European Commission's finding of torture was confirmed by the Committee of Ministers). In ECHR jurisprudence the term 'torture' is said to 'attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering' (*Ireland v the UK*). In *Aydin v Turkey*, where the Court did make a finding of torture, the applicant, a 17 year old girl was stripped naked, blindfolded, spun around and around in a car tyre and sprayed with cold water from high pressure water jets, she was also raped and beaten. The Court found that the rape on its own would constitute torture in this case.

## **Inhuman Treatment/Punishment**

Ill-treatment must reach a minimum level of severity before it may be said to be 'inhuman treatment/punishment'. A wide range of different treatments/punishments have been found to reach this minimum level and the harm suffered by the victim may be either mental and/or physical. These include the 'contemptuous' burning of Kurdish villagers' houses without taking safety precautions or offering financial and other assistance to them (see *Selcuk & Asker v Turkey*, *Akdivar v Turkey*), removal from the UK of a man suffering from AIDS where the removal would subject him to 'acute mental and physical suffering' (see *D v the UK*), the extradition of a person to the USA where he would face prosecution, the death penalty and the 'death row phenomenon' (see *Soering v the UK*), being kept blindfolded in a cold, dark cell and 'treated in a way which left wounds and bruises on [the] body' (see *Tekin v Turkey*), subjection to sleep deprivation, continual noise, deprivation of food and drink, covering of the head and 'wall-standing' (forcing detainees to lean against a wall for hours in a spread-eagle position with the weight of their body on their fingers) (see *Ireland v the UK*).

## **Degrading Treatment/Punishment**

Treatment will be degrading where the victim either in his own opinion, or in the opinion of others, has suffered 'humiliation or debasement attaining a minimum level of severity. That level has to be assessed with regard to the circumstances of the case'. (*Campbell v Cosans v the UK*). In relation to criminal punishment – the mere fact of being criminally convicted generally includes an element of humiliation however Article 3 ECHR does not include all criminal punishment. In order for punishment to be grading in breach of Article 3 ECHR 'the humiliation or debasement must attain a particular level' and must be more than the ordinary debasement involved in criminal conviction. The assessment is relative and 'depends on all the circumstances of the case and, in particular, on the nature and contest of the punishment itself and the manner and method of its execution' (*Tyrer v the UK*).

## **Detention (conditions of detention; ill-treatment during detention)**

The European Court has stressed that 'in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (*Tekin v Turkey, Ribitsch v Austria*).

Conditions of detention may themselves constitute treatment in violation of Article 3 (see *Tekin v Turkey, Soering v the UK, the Greek Case*). Thus Article 3 was found to be violated where there was a real risk of a person being extradited to face the 'death row phenomenon' in which prisoners are imprisoned for many years awaiting execution (*Soering v the UK*). In *Soering* the Court clarified that the death penalty itself was not a breach of Article 3, but circumstances in relation to the carrying out of the death penalty could be; these would include the manner in which it was imposed and executed, the personal circumstances of the accused, the proportionality of the sentence to the crime and the conditions of detention awaiting execution. In *Tekin v Turkey* detention in a cold, dark cell without lighting, bed or blankets in sub-zero temperatures with only food and water constituted a violation of Article 3 even though it was found that relatives had been allowed to visit and give extra clothing.

## **Removal, Expulsion, Deportation, Extradition**

It is likely that Article 3 will be argued in many immigration and asylum cases before Adjudicators and the IAT. While States have a right to control entry, residence and expulsion of non-citizens the Strasbourg jurisprudence makes clear that they must do so subject to the requirements of the ECHR.

Thus Article 3 may be relied on in immigration and asylum cases. The ECHR only governs the conduct of states which are contracting parties to it. It does not govern the conduct of states which are not contracting parties to it nor does it oblige contracting states to impose ECHR standard on other states. However, Contracting states have an obligation under Article 3 to safeguard persons in respect of whom there are substantial grounds for believing that there is a real risk of their being subjected to treatment in breach of Article 3 if removed. Thus any state party to the ECHR will be in breach of Article 3 ECHR if it seeks to remove such a person to a country where there is a real risk that s/he will be subjected to treatment or punishment in breach of Article 3 (see *Soering v the UK*), *Cruz Varas v Sweden*, *Ahmed v Austria*, *H.L.R v France*). There will also be a breach of Article 3 if there is a real risk that the removal itself will be treatment contrary to Article 3 or will cause suffering amounting to a breach of Article 3 regardless of the action or inaction of the country to which the person is to be removed (see *D v the UK*).

### **Actions by State Employees**

Under the ECHR State authorities 'are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected' (*Ireland v the UK*).

### **Actions by Non-State Agents**

ECHR may also apply in removal/expulsion/deportation/extradition cases where substantial grounds have been shown for believing that there is a real risk of ill-treatment/punishment in breach of Article 3 by non-state agents and the authorities of the receiving state are 'not able to obviate the risk by providing appropriate protection' (see *H.L.R v France*).

### **Development and Interpretation of the ECHR**

The ECHR is said to be 'a living instrument which ..... must be interpreted in the light of present-day conditions' (*Tyrer v the UK*). Thus, in considering what will constitute a violation of Article 3 the Court will consider developments and accepted standards in the contracting states to the ECHR.

#### **Human Rights Act 1998 – Interpretation Provision**

- Section 2(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any -
- (a) judgement, decision, declaration or advisory opinion of the European Court of Human Rights,
  - (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
  - (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
  - (d) decision of the Committee of Ministers taken under Article 46 of the Convention, whenever made or given, so far as, in the opinion of the Court or Tribunal it is relevant to the proceedings in which that question has arisen.
- Section 2(2) Evidence of any judgement, decision, declaration, or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

## **Strasbourg Procedure**

Prior to 1 November 1998 cases at Strasbourg were handled by two bodies: the European Commission and the European Court of Human Rights. On 1 November 1998 Protocol 11 of the ECHR introduced a new procedure under which the Commission was abolished. Since the old cases refer to both the Commission and the Court their role is clarified here for readers.

### **The 'Old Procedure'**

Under the 'old procedure' cases were first considered by the Commission. The Commission firstly decided whether the case was admissible. It could reject an application if domestic remedies had not been exhausted, if it was time-barred or manifestly ill-founded or the same as a matter already examined. Secondly, if the case was admissible, the Commission would examine the merits, make findings of fact and seek to encourage the parties to reach a friendly settlement. If no settlement was reached the Commission would send a report to the European Court setting out its findings on the facts and its opinion as to whether there had been a violation of the ECHR. The European Court would then hear the case and was not bound by the Commission's findings of facts or Opinion regarding violations of ECHR.

### **The 'New Procedure'**

New procedure under Protocol 11 involves a three part Court of Human Rights comprised of 1) a Committee consisting of three judges, 2) a Chamber of seven judges and 3) a Grand Chamber of 17 judges. The Committee will first receive the application and, where a decision can be made on its admissibility without further examination of the case, will make such decision. If declared admissible by the Committee, a Chamber will then consider the admissibility of the case further and, if admissible, will then consider it on the merits and pursue a friendly settlement between the parties. If no settlement can be reached the Chamber will issue a judgement. If important issues are raised within three months of the Chamber judgement the case will be referred to a Grand Chamber of 17 judges. In the absence of such a referral the Chambers judgement will be final.

### **D v the UK (1997) 24 EHRR 423**

D, a citizen of St Kitts, arrived in the United Kingdom in 1993 and sought leave to enter as a visitor; he was found to have cocaine with a street value of about £120,000 in his possession. He was charged with importation of class A drugs, pleaded guilty and sentenced to 6 years imprisonment. While in prison he was diagnosed as HIV positive and suffering with AIDS; the infection appeared to have occurred before his arrival in the United Kingdom. On 20 January 1996, just prior to his release on licence from prison, the United Kingdom immigration authorities gave directions for D's removal to St Kitts.

D requested leave to remain in the United Kingdom on compassionate grounds since removal to St Kitts would result in the loss of the medical treatment which he was receiving and would shorten his life expectancy. Medical advice was that D was only expected to live for 8-12 months if he remained in the United Kingdom. D had no family in St Kitts apart, possibly, for one cousin. The United Kingdom claimed that they would not remove D if he was unfit to travel, but that D had no valid Article 3 claim; if returned to St Kitts he would simply be in the same situation as any other AIDS sufferer in that country.

#### **COURT HELD:**

Subject to their obligations under international law, states have the right to control the entry, residence and expulsion of non-citizens. In this case it was noted that D had committed a serious drugs offence.

"However in exercising their right to expel such aliens Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. It is precisely for this reason that the Court has repeatedly stressed in its line of authorities involving extradition, expulsion or deportation of individuals to third countries that Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment and that its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question." Since D was physically present in the United Kingdom, although he did not have any legal leave to remain, it was for the United Kingdom to secure his rights under Article 3.

In previous ECHR expulsion cases the risk to the individual had stemmed either from intentionally inflicted acts of public authorities in the country to which that person would be removed or of non-state bodies where the state authorities are unable to protect the individual.

In this case D was receiving sophisticated medical treatment and counselling in the United Kingdom and had formed bonds with his carers. The withdrawal of those facilities and his removal to St Kitts would reduce D's already limited life expectancy and subject him to "acute mental and physical suffering". It could not be said that the conditions in St Kitts were themselves in breach of the standards of Article 3 and the potential breach of D's Article 3 rights if removed to St Kitts was not either directly, or indirectly, due to actions taken or lack of action by the St Kitts authorities. However, in this case, D's removal would "expose him to a real risk of dying under most distressing circumstances and would thus amount to inhuman treatment.

Removal of D to St Kitts would be in breach of Article 3.

## **Ireland v the UK (1978) 2 EHRR 25**

The Republic of Ireland claimed that the United Kingdom police were carrying out practices in violation of Article 3 ECHR. They claimed, *inter alia*, that interrogation methods by the Royal Ulster Constabulary ("RUC"), known as the "five techniques", were in contravention of Article 3. The "five techniques" included: "wall standing" – forcing detainees to remain for some hours "spread –eagled" leaning against a wall with the weight of their bodies mainly on the fingers, "hooding" – putting a black or dark blue bag over the detainee's head and, at least initially, leaving it on all the time except interrogation, subjection to a continuous loud hissing noise during interrogation, sleep deprivation pending interrogations, deprivation of food and drink. These "five techniques" were used in combination with premeditation and for hours causing intense physical and mental suffering and acute psychological disturbance. The Commission had considered that the "five techniques" constituted torture.

COURT HELD:

HELD: RE STATE RESPONSIBILITY FOR ACTS OF SUBORDINATES

The Court made clear that "under the Convention ... [State] authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will on subordinates and cannot shelter behind their inability to ensure that it is respected.

The "five techniques" had been taught orally by the English Intelligence Centre to members of the RUC, although they had never been authorised in writing in any official document.

HELD RE BURDEN AND STANDARD OF PROOF:

The Court would not rely on the concept of the burden of proof, but would simply examine all the evidence before it. In relation to the standard of proof in Article 3 cases "the Court adopts the standard of proof 'beyond reasonable doubt' but adds that such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken into account.

RE BREACH OF ARTICLE 3

"Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc."

Torture, inhuman and degrading treatment or punishment are prohibited "in absolute terms ... irrespective of the victim's conduct." There can be no derogation from Article 3 "even in the event of a public emergency threatening the life of the nation." (A public emergency threatening the life of the nation had been formally declared by the United Kingdom in this case).



The “five techniques” were used in combination, with premeditation and for hours at a time and they caused “if not actual bodily injury, at least intense, physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

However, the “five techniques” did not constitute “torture” under the ECHR. The difference between “torture” and “inhuman or degrading treatment” under Article 3 “derives principally from a difference in the intensity of the suffering inflicted”. It was the intention of the drafters of the ECHR that the term “torture” should “attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The “five techniques” did not cause suffering “of the particular intensity and cruelty implied by the word “torture” in Article 3 of the ECHR.

HELD: United Kingdom was in breach of Article 3.

## **Soering v the UK (1989) 11 EHRR 439**

Mr Soering was a German citizen. The USA asked the United Kingdom to extradite him in order to face trial for murder in Virginia. The murders in question were alleged to have been committed by Mr Soering when he was 18 together with his girlfriend. The victims were her parents. There was psychiatric evidence that at the date of the killings Mr Soering was suffering from a mental abnormality. The Virginia prosecutor would be seeking the death sentence if Mr Soering was found guilty of murder.

Mr Soering claimed that the decision of the United Kingdom Secretary of State for the Home Department to surrender him to the American authorities would, if implemented, be a breach of Article 3 ECHR by exposing him to the 'death row phenomenon' in Virginia.

COURT HELD:

RE: APPLICABILITY OF ARTICLE 3 TO EXTRADITION CASES

In interpreting the ECHR "regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. Thus the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective. In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with 'the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society'".

The ECHR only governs states which are parties to it. It does not govern states which are not parties to it nor does it require states who are parties to it to impose ECHR standards on other states. The ECHR does not, as a general principle, provide that Contracting States may not extradite individuals to countries which do not satisfy the standards of the ECHR. However, it will be a violation of Article 3 if a Contracting State expels a person to a country where there is a real risk that they will be subjected to torture, inhumane or degrading treatment or punishment.

The Court stated: "it would hardly be compatible with the underlying values of the Convention ....were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances while not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article."

"In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country.

APPLICATION OF ARTICLE 3 TO THE FACTS OF THIS CASE

Mr Soering had not pleaded guilty to the murders however there was a "significant risk" that he would be convicted. Although<sup>10</sup>the United Kingdom would be making a

representation to the sentencing judge that they wished that the death penalty should not be imposed or carried out, there could be no assurance that the Virginia courts would not order the death sentence and the prosecutor of Virginia did intend to seek the death sentence in this case. The European Court thus found that Mr Soering faced a real risk of the death sentence and the 'death row phenomenon'.

Ill-treatment and punishment, must attain a minimum level of severity before being barred by Article 3. The assessment of the minimum is relative and "depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim."

Article 3 does not itself prohibit the death penalty (since that would nullify the clear wording of Article 2 ECHR). However, circumstances relating to a death sentence may bring the treatment or punishment under the prohibition of Article 3. These could include: the manner in which it is imposed or executed, the personal circumstances of the condemned person, the proportionality of the death sentence to the gravity of the crime and the conditions of detention awaiting execution.

In this case there could be no criticism of the state of Virginia's legal system. Prisoners on death row could expect to stay there an average of 6 to 8 years; while this was in part due to appeals which would be pursued by the prisoner those appeals were necessary to ensure that the death sentence was not imposed arbitrarily or unlawfully and it was "part of human nature that the person will cling to life by exploiting those safeguards to the full". The European Court considered that having regard to the "very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3." Moreover, instead of sending Mr Soering to the USA to be tried, he could be sent to his own country, Germany, where he would not face the death penalty.

HELD: Extradition of Mr Soering to the USA would be in violation of Article 3 ECHR.

## **Tyrer v the UK (1978) 2 EHRR 1**

My Tyrer was a citizen of the United Kingdom resident on the Isle of Man. He was birched in the Isle of Man when aged 15 following a conviction for assault occasioning actual bodily harm. Isle of Man legislation provided for corporal punishment of children and young persons for the crime of assault. In the United Kingdom and Northern Ireland judicial corporal punishment had been abolished, but it was retained in the Isle of Man where it was considered to be a deterrent. A privately organised petition in favour of retaining judicial corporal punishment attracted 31,000 signatures; approximately 45,000 voters lived on the Isle of Man.

The birching was carried out on Mr Tyrer following his appeal against sentence, on the same day as the unsuccessful appeal. The birching was carried out by the police in the presence of Mr Tyrer's father and a doctor. Mr Tyrer was made to take off his trousers and underwear and bend over a table; two policemen held him while a third administered the punishment. Following the birching Mr Tyrer's skin was raised but not cut and he was sore for about a week and a half.

Mr Tyrer claimed that the birching violated Article 3.

COURT HELD:

RE: TORTURE

Mr Tyrer's punishment did not amount to "torture" within the meaning of Article 3. On the facts of the case, Mr Tyrer had not undergone suffering of the level inherent in the notion of "torture" as interpreted and applied in the case of *Ireland v the UK*.

RE: INHUMAN TREATMENT/PUNISHMENT

Suffering must "attain a particular level before a punishment can be classified as 'inhuman' within the meaning of Article 3". On the facts of this case Mr Tyrer had not suffered to the degree required to classify the treatment as 'inhuman'.

RE: DEGRADING TREATMENT/PUNISHMENT

The Court noted that merely by being criminally convicted a person would usually be humiliated and this was one of the effects of judicial punishment. However, this did not mean that judicial punishment would always be degrading within the meaning of Article 3. Article 3 implies that there is a difference between 'degrading punishment' and punishment in general.

"In the Court's view, in order for a punishment to be degrading' and in breach of Article 3, the humiliation or debasement involved must attain a particular level and must in any event be other than that usual element of humiliation referred to in the preceding subparagraph. The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution."

The Attorney-General for the Isle of Man argued that birching did not breach the ECHR since it did not outrage public opinion in the Isle of Man. The Court considered that, even if local public opinion did have relevance to the interpretation of the concept of

“degrading punishment”, it was not established in this case that the Manx population did not consider the punishment to be degrading – indeed it was possible that people favoured the retention of birching because they considered it to be degrading and thus to be an effective deterrent for this very reason. The ECHR does not permit the use of degrading punishment regardless of its deterrent effect.

Publicity might be a factor in assessing whether a punishment is “degrading”, but the absence of publicity does not mean that it is not “degrading”.

The ECHR is “a living instrument which ... must be interpreted in the light of present-day conditions.” In this case the Court would be influenced by developments and accepted standards in the penal policy of the Member States of the Council of Europe regarding corporal punishment.

The Court considered that the “very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence, that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State. Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person’s dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects.

The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.

Mr Tyrer, in addition to suffering physical pain, was also subjected to “the mental anguish of anticipating the violence” to be inflicted on him since the birching was carried out after a wait of several weeks since conviction and there was delay in the police station where the punishment was carried out.

It was irrelevant that Mr Tyrer was sentenced for an offence of violence.

In all the circumstances the punishment of Mr Tyrer included humiliation which “attained the level inherent in the notion of ‘degrading punishment’ ... The indignity of having the punishment administered over the bare posterior aggravated to some extent the degrading character of the applicant’s punishment but it was not the only or determining character.”

HELD: There was a violation of Article 3. The judicial corporal punishment was ‘degrading punishment’.