

# ORDINANCE 9 OF 2004

## AN ORDINANCE TO GIVE FURTHER EFFECT TO RIGHTS AND FREEDOMS GUARANTEED UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

**P. T. C. Pearson CBE**  
**ADMINISTRATOR**

*5th April 2004.*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

### **PART I**

#### **PRELIMINARY PROVISIONS**

- 1.** This Ordinance may be cited as the Human Rights Ordinance 2004. Short title
- 2.**—(1) In this Ordinance “the Convention rights” means the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the Convention, as read with Articles 16 to 18 of the Convention. The Convention rights.
- (2) The Articles are set out in Schedule 1. Schedule 1.
- 3.**—(1) In this Ordinance, unless the context otherwise requires — Interpretation.
- “amend” includes repeal and apply (with or without modifications);
- “the Commission” means the European Commission of Human Rights;
- “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the Areas;
- “declaration of incompatibility” means a declaration under section 6;
- “primary legislation” means any—

- (a) Ordinance made by the Administrator in accordance with the powers conferred on him by section 4 of the Order in Council 1960;
- (b) Law of the former Colony of Cyprus adopted under section 5 of the Order in Council 1960;
- (c) Act of the United Kingdom Parliament which is applicable either to Her Majesty's Overseas Territories generally or to the Areas in particular;
- (d) Order in Council which is applicable either to Her Majesty's Overseas Territories generally or to the Areas in particular, whether made in exercise of Her Majesty's Royal Prerogative or made under any Act of the United Kingdom Parliament;
- (e) order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act of the United Kingdom Parliament or under an Order in Council and which is applicable either to Her Majesty's Overseas Territories generally or to the Areas in particular,

and includes an order or other instrument made under primary legislation of the kind mentioned in paragraphs (a) and (b) above to the extent to which it operates to bring one or more provisions of that legislation into force or amends that legislation;

“rules of court” means such rules as may, with the advice and approval of the Senior Judge, be provided by the Administrator and published in the Gazette;

“the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11<sup>th</sup> May 1994;

“subordinate legislation” means any order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation of the kind mentioned in paragraphs (a) and (b) of the definition of primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends that legislation);

“tribunal” means any tribunal in which legal proceedings may be brought.

(2) The references in paragraphs (b) and (c) of section 4(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(3) The reference in paragraph (d) of section 4(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(4) The references in section 4(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

## PART II

## INTERPRETATIVE OBLIGATION

**4.—**(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

Interpretation of  
Convention rights.

- (a) judgment, 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.

(2) Evidence of any judgment, 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 accordance with rules of court.

**5.—**(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

Interpretation of  
legislation.

(2) This section—

- (a) applies to primary legislation and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any primary legislation which cannot be read and given effect in a way which is compatible with the Convention rights; and
- (c) does not affect the validity, continuing operation or enforcement of any subordinate legislation which cannot be read and given effect in a way which is compatible with the Convention rights if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

**6.—**(1) Subsection (2) applies to any proceedings in which a court determines whether a provision of any—

Declaration of  
incompatibility.

- (a) Ordinance made by the Administrator in accordance with the powers conferred upon him by section 4 of the Order in Council 1960;
- (b) Law of the former Colony of Cyprus adopted under section 5 of the Order in Council 1960,

is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation is compatible with a Convention right.

(4) If the court is satisfied—

- (a) that the provision is incompatible with a Convention right, and
- (b) that (disregarding any possibility of revocation) the primary legislation under which it is made prevents removal of the incompatibility,

it may make a declaration of that incompatibility.

(5) In this section—

“court” means –

- (a) the Judge’s Court, where the Senior Judge has consented to such court dealing with a claim for a declaration under this section,
- (b) the Senior Judge’s Court,
- (c) the Judicial Committee of the Privy Council.

(6) A declaration under this section (“a declaration of incompatibility”)—

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

**7.—**(1) Where a court is considering whether to make a declaration of incompatibility, the Attorney General and Legal Adviser is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies, the Attorney General and Legal Adviser is entitled on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

(3) Notice under subsection (2) may be given at any time during the proceedings.

### **PART III**

#### **PUBLIC AUTHORITIES**

**8.—**(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

- (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
- (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

Right of Attorney General and Legal Adviser to intervene.

Acts of public authorities.

(3) In this section, “public authority” includes—

- (a) a court or tribunal, and
- (b) any person certain of whose functions are functions of a public nature,

but does not include—

- (i) the Administrator (or any person acting on his behalf) when he is exercising functions in his legislative capacity, and
- (ii) either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(5) “An act” includes a failure to act but does not include a failure to make any primary legislation or order under section 12.

**9.—(1)** A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 8(1) may—

Proceedings.

- (a) bring proceedings against the authority under this Ordinance in the appropriate court or tribunal, or
- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules of court; and proceedings against an authority include a counterclaim or similar proceeding.

(3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(4) Proceedings under subsection (1)(a) must be brought before the end of—

- (a) the period of one year beginning with the date on which the act complained of took place; or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(5) In subsection (1)(b) “legal proceedings” includes—

- (a) proceedings brought by or at the instigation of a public authority; and
- (b) an appeal against the decision of a court or tribunal.

(6) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article

34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(7) Nothing in this Ordinance creates a criminal offence.

(8) In making rules, regard must be had to section 11.

Judicial remedies.

**10.**—(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining—

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) In this section—

“court” includes a tribunal;

“damages” means damages for an unlawful act of a public authority; and

“unlawful” means unlawful under section 8(1).

Judicial acts.

**11.**—(1) Proceedings under section 9(1)(a) in respect of a judicial act may be brought only—

(a) by exercising a right of appeal; or

(b) in such other forum as may be prescribed by rules of court.

(2) That does not affect any rule of law which prevents a court from being the subject of judicial review.

(3) In proceedings under this Ordinance in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.

(4) An award of damages permitted by subsection (3) is to be made against the Administrator; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.

(5) In this section –

“appropriate person” means the Attorney General and Legal Adviser;

“court” includes a tribunal;

“judge” includes a member of a tribunal and a Registrar or other officer entitled to exercise the jurisdiction of a court; and

“judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge.

## PART IV

### REMEDIAL ACTION

12.—(1) This section applies if—

Power to take remedial action.

(a) a provision of legislation has been declared under section 6 to be incompatible with a Convention right and, if an appeal lies—

(i) all persons who may appeal have stated in writing that they do not intend to do so;

(ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or

(iii) an appeal brought within that time has been determined or abandoned; or

(b) it appears to the Administrator that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the Areas, a provision of primary legislation of the kind mentioned in paragraphs (a) and (b) of the definition of primary legislation or a provision of subordinate legislation, is incompatible with an obligation of the Areas arising from the Convention.

(2) If the Administrator considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

(3) If, in the case of subordinate legislation, the Administrator considers—

(a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and

(b) that there are compelling reasons for proceeding under this section,

he may by order make such amendments to the primary legislation as he considers necessary.

(4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Administrator proposes to proceed under paragraph 2(b) of Schedule 2.

(5) Schedule 2 makes further provision about orders made under this section.

Schedule 2.

## PART V

## OTHER RIGHTS AND PROCEEDINGS

Safeguard for existing human rights.

**13.** A person's reliance on a Convention right does not restrict—

- (a) any other right or freedom conferred on him by or under any law having effect in the Areas; or
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 9 to 11.

Freedom of expression.

**14.—**(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—

- (a) that the plaintiff has taken all practicable steps to notify the defendant; or
- (b) that there are compelling reasons why the defendant should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the plaintiff is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the defendant claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
  - (i) the material has, or is about to, become available to the public; or
  - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.

(5) In this section—

"court" includes a tribunal; and

"relief" includes any remedy or order (other than in criminal proceedings).

Freedom of thought, conscience and religion.

**15.** —(1) If a court's determination of any question arising under this Ordinance might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

(2) In this section "court" includes a tribunal.

Rules of court.

**16.** The Administrator may, with the advice and approval of the Senior Judge, make supplementary rules of court which can adapt any existing rules of procedure of any court or tribunal. Such rules shall be published in the Gazette.



**17.—**(1) This Ordinance shall come into force on a date to be appointed by the Administrator and published in the Gazette.

Commencement  
and application to  
the Crown

(2) Paragraph (b) of subsection (1) of section 9 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section.

(3) This Ordinance binds the Crown.

## SCHEDULES

### SCHEDULE 1

#### THE ARTICLES OF THE CONVENTION

Section 1(3)

#### RIGHTS AND FREEDOMS

##### *Article 2*

##### *Right to Life*

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

##### *Article 3*

##### *Prohibition of 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:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from

such detention;

- (b) any service of a military character or, in the case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

### *Article 5*

#### *Right to liberty and security*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

#### *Article 6*

##### *Right to a fair trial*

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### *Article 7*

##### *No punishment without law*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

*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 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.

*Article 9**Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*Article 10**Freedom of expression*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the 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.

*Article 11**Freedom of assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a

democratic society in 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

*Article 12*

*Right to marry*

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

*Article 14*

*Prohibition of discrimination*

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.

*Article 16*

*Restrictions on political activity of aliens*

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

*Article 17*

*Prohibition of abuse of rights*

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

*Article 18*

*Limitation on use of restrictions on rights*

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**SCHEDULE 2**

Section 12

**ORDERS MADE UNDER SECTION 12**

- 1.—(1) An order made under section 12 may—
- (a) contain such incidental, supplemental, consequential or transitional provision as the Administrator considers appropriate;
  - (b) be made so as to have effect from a date earlier than that on which it is made;
  - (c) make provision for the delegation of specific functions;
  - (d) make different provision for different cases.
- (2) The power conferred by sub-paragraph (1)(a) includes—
- (a) power to amend primary legislation of the kind mentioned in paragraphs (a) and (b) of the definition of primary legislation (including primary legislation of that kind other than that which contains the incompatible provision); and
  - (b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
- (3) An order made under section 12 may be made so as to have the same extent as the legislation which it affects.
- (4) No person is to be guilty of an offence solely as a result of the retrospective effect of an order made under section 12.

*5th April 2004*  
(SBA/128/163)

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P. D. Draycott,  
Chief Officer.

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