

Discussion Box 4.2

Derogations and the prevention of terrorism

In the lifetime of the ECHR, a significant number of derogations have been made in order to prevent terrorism. Art 15 specifically permits states to derogate from the ECHR '[i]n time of war or other public emergency threatening the life of the nation.' Specific examples include:

- In 1969, Greece derogated from Arts 10 and 11 following a series of strikes and demonstrations committed by Communist agitators. The ECtHR held that the derogation was invalid as there was no 'public emergency threatening the life of the nation.'¹
- In 1978, following serious acts of terrorism committed by the IRA in Northern Ireland, the UK government derogated from Art 5 and introduced increased powers of arrest, detention and internment (including one police operation where 350 people were arrested and detained). A legal challenge by the Irish government failed.²
- In 1990, Turkey derogated from the ECHR Art 5, following prolonged terrorist activity by Kurdish separatists in which over 8,000 people had died. Whilst the ECtHR agreed that the terrorist activity constituted a 'public emergency' that warranted derogation, the measures taken by Turkey (namely 14 days detention without charge or trial) were disproportionate and unjustified.³
- In 2001, following the attack on the World Trade Centre in New York, Parliament passed the Anti-Terrorism, Crime and Security Act 2001 which permitted non-UK citizens suspected of terrorism to be detained without trial or charge. The UK government derogated from Art 5. A legal challenge resulted in certain provisions of the Act being deemed incompatible with Arts 5 and 14 and, consequently, the derogation order was quashed.⁴

¹ *The Greek Case* (1969) 12 YB 1.

² *Ireland v United Kingdom* (1978) 2 EHRR 25.

³ *Aksoy v Turkey* (App no 21987/93) (1996) 23 EHRR 553.

⁴ *A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68.