

ECHR rights and freedoms that may be most relevant to policing	Human rights which are most likely to be directly jeopardized in situations where force is used	Articles engaged when: <ul style="list-style-type: none"> – managing conflict – arresting offenders – responding to potentially dangerous situations
Article 2 – the right to life	✓	✓
Article 3 – prohibition of torture, inhuman or degrading treatment or punishment	✓	✓
Article 5 – the right to liberty and security of the person		✓
Article 6 – the right to a fair trial		
Article 7 – no punishment without law		
Article 8 – the right to respect for private and family life	✓	✓
Article 9 – freedom of thought, conscience and religion		
Article 10 – freedom of expression		✓
Article 11 – freedom of assembly and association		✓
Article 14 – prohibition of discrimination		✓

Article 2 – right to life

Article 2 of the ECHR states:

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.

Article 2 imposes on EU states an obligation to safeguard life. This consists of the following main duties:

- an obligation to protect the right to life
- prohibition on the taking of life
- procedural obligation to investigate deaths resulting from the state’s use of force or from the state’s failure to protect the right to life.

Article 2 can also require, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. Certain well-defined circumstances was defined in [Osman v United Kingdom \(1998\) 29 EHRR 245](#):

it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the

scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Deaths resulting from state's use of force

ECHR Article 2 imposes a requirement of strict proportionality between:

- the objective
- the force used to achieve it.

Deprivation of life shall not be regarded as inflicted in contravention of Article 2 when it results from the use of force which is no more than absolutely necessary to achieve one of the following permitted objectives:

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

The European Court of Human Rights has made a distinction between the use of force which is intended to be lethal, or as a result of which death occurs, and other uses of force.

Article 2 will be invoked whenever death occurs at the hands of the State (or serious injury in a situation where death could have occurred), irrespective of the police contact or type of force or weapon used. The European Court of Human Rights has held that this will apply to:

- the use of force which is intended to result in the death of a person and which has that effect
- the use of force which results in the death of a person and which could have been reasonably foreseen to have that consequence
- the use of force which results in serious injury to a person, where death could have occurred.

Absolutely necessary

The question of whether a use of force was absolutely necessary in the circumstances is one that depends to a large degree on the facts of the individual case. Key issues to consider include:

- The nature of the aim pursued – is it the protection of a person from unlawful violence which poses a real and immediate risk to life?
- Is the use of firearms or force which has the potential to result in death absolutely necessary in the circumstances, bearing in mind the dangers to the lives of all persons involved?
- What are the risks to others, including the subject of the force and all others in the vicinity?

- What other options were considered before resorting to the use of force?
- What weapons or equipment were available at the time?
- Why were these options discounted?
- Have all relevant decisions been recorded and reported?

The European Court of Human Rights has held in [McCann v United Kingdom \(1995\) 21 EHRR 97](#) (paragraph 150) that:

in keeping with the importance of this provision [the right to life] in a democratic society the court must, in making its assessment, subject deprivation of life to the most careful scrutiny taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.

The police also have a duty of care to take reasonable steps to prevent a person self-harming or threatening to self-harm or carrying out acts intended to result in suicide. The force used would then have to be proportionate to the harm anticipated and designed to minimise the risk to the subject.

Article 3 – prohibition of torture

Article 3 of the ECHR prohibits:

- torture – deliberate inhuman treatment causing very serious and cruel suffering
- inhuman treatment – treatment that causes intense physical and mental suffering
- degrading treatment – treatment that arouses in the victim a feeling of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking their physical or moral resistance
- punishment.

Everyone is entitled to the protection of Article 3, irrespective of their conduct (*Chahal v UK* (1997) 23 EHRR 413). This is an absolute right from which there can be no derogation, even in times of war or other public emergency (Article 15 ECHR), ie, there can be no justification for engaging in behaviour prohibited by Article 3.

Article 3 of the ECHR is particularly relevant to any excessive or inappropriate use of force by the police.

Further information

Issues in respect of restraint and handcuffing are covered in the [ACPO Personal Safety Manual](#) (available via NCALT, which is a RESTRICTED online tool with access limited to [registered](#) users).

Firearms, less lethal weapons and arrest and restraint procedures must not be used by police officers with the sole intention of inflicting severe pain or suffering on another in the performance or purported performance of official duties, see [Ribitsch v](#)