

## Index

---

*Note:* This index concentrates on legal issues as decided by the relevant judicial or quasi-judicial body. Facts, summaries (except where they are the only record) and parties' arguments are very lightly indexed, concentrating on points necessary to an understanding of the legal argument. Material relating to treaties and treaty interpretation is usually indexed by concept. For entries by article, readers should consult the Table of Treaties.

- aboriginal rights. *See* Brazil, Yanomami; Canada, aboriginal Indians; Ecuador, indigenous people in; Finland, Sami rights; Sweden, Sami
- access to a court. *See* fair and public hearing before an independent and impartial tribunal
- act of state
  - See also* administrative act, classification as; state immunity in own courts; state responsibility
  - fair hearing and 252
  - nuclear energy decisions 243–6, 247–52, 253–5, 258–9
  - rights to challenge and for compensation distinguished 256–7
- actio popularis* 70, 796
- administrative act, classification as 579–81
  - See also* act of state
- administrative courts and tribunals
  - as 'independent and impartial tribunal' with broad competence 251, 254–5, 256–7, 340–1, 586–7, 608–10, 613–27
  - discretion, relevance 616–17
  - jurisdiction over private-law acts 391
- administrative law, uniformity of protection of individual in all member states, need for 617–18
- administrative proceedings, 'civil rights and obligations' and 611–27
- aircraft noise. *See* noise
- aliens
  - European Union nationals in French overseas territories 633–4, 638–9
  - political activity 633–4, 638–9
- American Convention on Human Rights (1969)
  - non-restriction of rights under domestic law or other binding international instruments 877–8
- rights under
  - fundamental nature of the right to life 866
  - indigenous peoples in Ecuador, difficulties in securing 873
  - interdependence 877
  - sustainable development 871
- American Declaration of the Rights and Duties of Man (1948)
  - continuing source of obligations for member states 866
  - sustainable development 871
- applicable law
  - classification as
    - 'association' 412
    - 'civil right or obligation' 198, 551, 559–60
    - 'home' 825
  - interest 499–500
- arbitrary detention. *See* liberty, deprivation of
- Austria
  - civil rights and obligations, challenge to revocation of tipping licence 612–18
  - fair and public hearing before an independent and impartial tribunal
    - administrative proceedings and 611–27

- Austria (*cont.*)  
 competent to determine all aspects of the matter  
   Administrative Court 586–7, 608–10, 613–27  
   Constitutional Court 586, 608–9  
 oral hearing, need for 587, 610–13  
   administrative proceedings and 611–12  
   waiver of right 587, 610–11  
 public interest, matters of 587  
 independent and impartial tribunal  
   competent to determine all aspects of the matter, Administrative Court 585–7, 613–27  
   Constitutional Court 586  
 law of  
   Administrative Court Law 586, 612–13  
     s 41 625–6  
     s 42 625  
   Buildings Regulation Act (*Land Upper Austria*) 1976 603–6  
   Constitution  
     Art. 94 615 n. 4  
     Art. 129(a) 625  
     Art. 130 625  
     Art. 130(1) 625–6  
     Art. 130(2) 626  
   separation of powers 615–16  
 ‘belief’, definition 454, 459  
 Brazil  
 law of  
   Civil Code, Art. 6 845  
   Constitution  
     Art. 4.IV 850  
     Art. 168 850  
     Art. 198 845, 850  
   Law 6,001 (Statute of the Indians Law) 848–50  
     Art. 2 845, 851  
     Art. 3 850  
     Art. 11 848  
     Art. 19 851  
     Art. 20 851  
     Art. 23 845  
     Art. 25 851  
 Yanomami  
   free movement, right of 853  
   health and well-being 853  
   liberty, deprivation of 853  
   life, right to 853  
   measures to protect security, health and integrity 852–3, 871  
   participation in decisions affecting 853  
   residence, right of 853  
   road construction (Northern Circumferential Highway), effect on 852–3  
   security of person 853  
   status and numbers 845–50  
   Yanomami Indian Park, recommendation for establishment 846, 853  
 burden of proof, defamation 488  
 Canada  
   aboriginal Indians 30–61  
     bands  
       as ‘people’ 59  
       state’s attempt to create artificial 59  
     recognition of rights  
       Indian Act 1970 55  
       Treaty 8 (1899) 55, 57  
     violation of rights under International Covenant on Civil and Political Rights (1966) 59–60  
   Charter of Human Rights and Freedoms, s 7 (right to life) 11–12  
   nuclear waste, right to life and, remedies 11–12  
 certainty of law, need for 579–81  
   breach of the peace 691–3, 695–7  
   *contra bonos mores* 695–6  
 civil rights and obligations  
   administrative proceedings 611–27  
   applicable law for determining whether 198, 551, 559–60  
 challenge to  
   building restrictions 559–60, 564, 565  
   designation as protected natural site 566  
   nuclear energy decision 258  
   planning decision 605–6, 642  
   requirement to plant a particular type of tree 762–3  
   revocation, grant or refusal of licence for for gravel extraction 187, 198–9  
   installation and storage of LPG 551–2  
   sale of alcoholic beverages 199  
   tipping 612–18  
   transport of passengers 198–9  
 compensation claim for noise and air pollution 525  
 expropriation proceedings 258, 534–5, 539–40, 541, 544–5  
 pecuniary nature of subject matter/right infringed, relevance 605–6  
 pension rights 321, 337

- physical integrity 243–4, 254–5  
 property rights 254–5, 560, 592–3  
 rent-determination proceedings 681  
 common heritage, preservation 250  
 compensation for  
   economic losses 188  
   actual prejudice, need for 280  
   causal link with breach, need for 188, 498  
   evidence of damage, need for 419  
   offset 223  
 expropriation 741  
 interference with private life/home caused by  
   pollution 223–4, 280, 773  
 interference with property rights  
   control of property in the general interest  
     387, 388, 389, 392, 406, 407, 439,  
     453, 545–6, 565  
   measure, past earnings 456, 457  
   nuclear energy and 256–7, 772–3  
   relevance 573–4, 575–6  
 noise 147–8, 163–4, 727, 772–3  
 non-pecuniary damage 188, 280  
   on equitable basis 223–4, 419, 593–4  
 conservation measures  
   minority rights and 24–5, 60  
   proportionality 24–5, 60, 194  
   other public and private interests, need to  
     consider 180, 184, 187, 189, 195  
 control of use of property. *See* property rights  
 costs and expenses. *See* European Court of  
   Human Rights, costs and expenses  
 cruise missiles. *See* nuclear weapons deployment  
 culture. *See* minorities, rights of
- defamation  
   burden of proof 488  
   remedies 483, 486–8, 503, 516  
   truth as defence 482, 486–8, 503  
   unlawfulness of expression, need for 487–8,  
     503, 516
- degrading treatment. *See* inhuman or degrading  
 treatment
- demonstrate, right to. *See* freedom of association;  
 freedom of expression; freedom of  
 peaceful assembly; liberty, deprivation  
 of
- deprivation of property. *See* property rights  
 detention. *See* liberty, deprivation of  
 discrimination  
   different treatment of comparable cases, need  
     for 186–7, 189–90, 196, 815, 827,  
     836–7
- evidence, need for 814  
 gypsies 668–73  
 hunters/non-hunters 425–7, 461  
 hunting rights, enforced transfer on basis of  
   size of landholding 385, 388, 389,  
   390, 392, 408–10, 417–18, 422–3,  
   431–2, 440–2, 448, 449–50, 453–4,  
   455, 458  
 justification for 409–10, 441–2, 449–50  
   legitimate aim 196, 389, 390, 441  
   margin of appreciation 409–10, 440, 454  
   proportionality, need for 441, 455, 458  
   reasonableness as determining factor 424–7  
 Lapps in Norway 742  
 minorities 874  
 nuclear tests, choice of site 800  
 persons whose property is affected by planning  
   provisions 546–7  
 rule of law and 424  
 uniformity of treatment across country,  
   relevance 410, 423, 432, 439, 448, 453
- economic activity  
   *See also* oil exploitation  
   as legitimate aim 156–7, 163, 659  
 minority rights and  
   displacement 883–4  
   intrusion of outsiders, effect 852–3, 882–3  
   measures to counteract effects 884–5  
   proportionality 102–3, 132–3, 740–1  
 rights of private individual and, proportionality  
   220–1, 222, 387  
 state's right to regulate 24, 102–3
- Economic Commission for Europe (ECE),  
 Regulation 83 (vehicle standards)  
 835–7
- economic interests, as 'possession' 191
- Ecuador  
 environment, measures for the protection of  
   863–5, 869
- indigenous people in  
 boundaries, determination of as aid to  
   protection 853, 884–5, 888  
 culture, enjoyment and preservation of 873,  
   888  
 effect of oil exploitation 857–72, 880–5  
   environmental audit 864–5  
   right of redress 869  
 entitlement to  
   fair trial including translation or  
     interpretation where necessary  
   874

- Ecuador (*cont.*)
- participation in decisions affecting 870, 871, 888
  - participation in public life 874
  - government policy towards 873, 879–80
  - health, risk arising from intrusion of outsiders 882–3
  - information, right to
    - environmental matters 870, 888
    - health 870, 872
  - languages 878–80
  - measures to ensure enjoyment of their rights 871–2, 887–8
  - property rights 875–7
    - designation of land as natural reserve, effect 884
  - rights under American Convention, difficulty in securing 873
  - status, numbers and organization 872–3, 880–1
  - uncontacted groups, protection of rights 885–6
- law of
- Agrarian Development Law 1994 876
  - Agricultural Promotion Law 877
  - Civil Code 875–6
  - Colonization Law 877
  - Comunas Law 876
  - Constitution
    - amendments (1995) (recognising different ethnic peoples and cultures) 872–3
    - amendments (1996) to protect the environment 865
    - Art. 19 865
    - Art. 27 879
    - Art. 46(3) 876
    - Art. 51 875, 882 n. 29
  - Executive Decree 1802 of June 1994 (Basic Environmental Policies of Ecuador) 863, 870
  - Forestry and Conservation of Natural Areas and Wildlife Law 1981 863, 876–7, 884
  - General Regulation of Education Law 879 n. 20
  - Prevention and Control of Environmental Contamination Law 1976 863
  - Water Law 1972 863, 877
- sustainable development, support for
- international instruments recognising 865–6
  - effective remedy before a national authority 152–3, 158–65, 742
  - challenge to the law and 154, 161
  - fair and public hearing before independent tribunal distinguished 246, 251, 255–6, 325, 345
  - margin of appreciation and 156–7
  - in respect of ‘manifestly ill-founded’ claim 152–3, 159–60
  - ‘arguable’ claim and 152–3, 159–60, 161, 163, 164–5, 814, 828
- environmental impact assessments, importance 870
- environmental matters
- See also* conservation measures; environmental protection legislation; health, risk to; hunting rights; noise; pollution; proportionality; reindeer herding; seal-hunting, criticism of
  - as matter of conscience 389, 420, 459–61
  - freedom of expression, right of EU national/Green Party MEP in French overseas territory 629–40
  - information relating to, right to 274, 276–7, 282, 283, 285–93, 870, 888
  - judicial remedy, right to 870–2
  - preservation of nature, absence of right to under European Convention on Human Rights (1950) 711
  - public participation in decision-making, importance 870, 871, 888
- environmental protection legislation 215–16, 393–401
- as in ‘general interest’ 182, 184–6, 194–6, 384–7, 388, 389, 404–5, 421–2, 427–8, 438, 456–7, 458, 574
  - where application geographically limited 439
- breach as criminal offence 216
- certainty of law, need for 579–81
- in Ecuador 863–4
- gypsies and 660–73
- equality of treatment, general principle of law 391
- See also* discrimination
- ethnic rights. *See* minorities, rights of
- European citizenship 633–4, 638–9
- European Commission of Human Rights
- admissibility. *See* European Court of Human Rights, admissibility
  - duty to raise matters of own motion 370
- Rules of Procedure
- 33 792
  - 36 791–2

- European Convention on Human Rights (1950)  
 act of public authority as breach 518  
 applicability, presence in country, relevance 636–7  
 application in domestic law 211–12, 384–90, 482  
 compliance  
   requiring amendment of constitutional law 617–18  
   state's right to determine means 281  
 discrimination, complementary nature of  
   Article 14 (discrimination) provisions 409, 441  
 foreign judgment, execution and 478  
 friendly settlement 730–1  
 individual's right of petition 796  
 interpretation  
   changed circumstances and 612  
   Convention to be construed as a whole 282  
   relationship between provisions within  
     article 182, 184, 191, 652  
 national courts and. *See* application in domestic law *above*  
 obligation to take reasonable and appropriate measures to secure rights 221–2, 226–9, 278–9, 328  
   obligation not to interfere with compared 156, 157, 220–1, 278, 283, 287, 324–5, 361–3, 825–6  
 proportionality. *See* proportionality  
 reservations and interpretative declarations,  
   changed circumstances and 612, 627–8  
 rights, state responsibility for failure to secure 221–2, 228–9, 726  
 'victim'  
   *actio popularis*, exclusion 796  
   actual prejudice, relevance 242–3, 573, 796–9  
   continuing effect of alleged violation 218–19, 225–6, 797–8
- European Court of Human Rights  
 admissibility  
   *See also* jurisdiction *below*; European Convention on Human Rights (1950), 'victim'; exhaustion of domestic remedies  
   actual harm or damage, relevance 160–1, 242–3, 245–6  
   alleged violation of right or freedom under Convention, need for 711  
   arguable claim 159–60, 162–3, 796, 798  
   Commission's decisions on, whether binding 151, 153, 274–5  
   failure to state grounds, effect 275  
   joinder to merits 317–18, 755  
   'manifestly ill-founded claim' 74, 151, 152, 162, 163, 562, 709, 741, 754, 773  
   *See also* jurisdiction *below*; European Convention on Human Rights (1950), 'victim'; exhaustion of domestic remedies  
   matters raised before Commission or Court, limitation to 361, 364, 610  
   responsibility of state relating to act complained of 726  
   'victim', need for 218–19  
 costs and expenses  
   domestic proceedings 188, 224, 498  
   interest. *See* interest on compensation and costs *below*  
   legal aid, effect 224, 280  
   Strasbourg proceedings 188, 224, 498–9  
     late application, effect 280  
 evidence  
   evaluation by Commission 330–7  
   facts arising after lodging of application 219–20  
 friendly settlement 730–1  
 Grand Chamber 237, 267, 380, 467  
 interest on compensation and costs  
   applicable law 499–500  
   equitable basis 499–500  
 judgments  
   oral delivery 611  
   revision, facts known prior to judgment 346–7  
 jurisdiction  
   *See also* admissibility *above*  
   any issue of fact or law arising during proceedings before it 275  
   characterisation in law of facts of case 151, 274–5  
   interpretation and application of the Convention 274  
   *jura nova curia* 274  
   matters arising before acceptance of right of individual petition 315–16, 317, 321–2, 350 n. ii, 368  
   right to raise matters of own motion 274  
 Rules of Procedure  
   21(3)(b) 144, 174, 209  
   21(4) 174, 209, 237, 266, 302  
   21(4)(b) 353

European Court of Human Rights (*cont.*)

- 21(5) 144, 175, 209, 237, 266, 302, 303, 353
  - 21(6) 237, 302, 380
  - 22(1) 144, 175, 354
  - 23(1) 144
  - 24(1) 175, 209, 237
  - 24(3) 380, 381, 467, 468
  - 24(4) 380, 467
  - 24(5) 380, 467, 468
  - 27(5) (Court A) 326 n. 1, 365 n. 1
  - 28(3) 266
  - 30 144, 353, 380
  - 30(1) 302, 353
  - 31 (Court B) 237, 266, 467
  - 33(3)(d) 144, 174
  - 33(3)(d) (Court A) 209, 302, 353, 380
  - 35(3)(d) (Court B) 467
  - 37(1) 144, 175, 209, 302, 353, 380
  - 37(1) *in fine* 353, 354
  - 37(2) 302
  - 37(3) 380
  - 38 144, 175, 209, 302, 353, 380
  - 38(1) 381
  - 39(1) 237, 266, 280
  - 40 237, 266, 267
  - 52(1) (Court B) 280
  - 53(1) 267
  - 53(2) 237, 267, 326
  - 53(6) 267
  - 55(2) (Court A) 611
  - 55(2) (Court B) 282
  - 74(2) 420, 500
  - 80 346 n. vii
  - 99(1) 381
  - 100(4) 381, 468
- European Economic Area Agreement (EEA)  
 (1994), Sami culture, effect on 101–2
- European Parliament  
 MEPs  
 privileges and immunities 638–9  
 status in French overseas territories 633–4,  
 638–9
- evidence  
 evaluation 330–7  
 facts arising after lodging of application 219–20
- exhaustion of domestic remedies  
 as general rule of international law 61  
 availability of alternative proceedings,  
 relevance 218
- effective remedy, need for 11–12, 38, 58, 87,  
 95–6, 727
- failure to put claim to the test 741

- immunity of suit in domestic courts and 726
  - precedent, effect of changing practice 83–4, 87
  - proceedings involving non-applicant party,  
 relevance 218
  - proceedings relating to different subject-  
 matter, relevance 218, 275–6, 284,  
 597
  - purpose  
 rectification of  
 alleged violation 218  
 situation 61
  - suspension of state activity to permit 87–8
  - unreasonable prolongation  
 caused by claimant 58  
 leading to irreparable damage 38  
*See also* interim measures  
 resulting from delay in injury becoming  
 apparent 11
  - expropriation, compensation for 741
  - expropriation *de facto*  
 compulsory transfer of hunting rights 455–6  
 declaration of public interest 650–3  
 expropriation permits coupled with building  
 restrictions 530–1, 545–6  
 limitation to building restrictions 555–6  
 invalidation of planning permission 574  
 revocation of gravel extraction permit 182–3,  
 191–4
  - temporary restrictions on use of property  
 598–600
- fair and public hearing before an independent and  
 impartial tribunal  
 certainty of law, need for 579–81, 623–4  
 competent to determine all aspects of the  
 matter 535–6, 585–7  
 administrative court 251, 254–5, 256–7,  
 340–1, 586–7, 608–10, 613–27  
 appeal court 644–7  
 constitutional court 586, 608–9  
 district court's decision not to make  
 independent assessment 681–7  
 competent to take final and binding decision  
 622–4
- environmental matters 870–2
- failure to make use of available procedure  
 321–2
- genuine dispute (*contestatio*), need for 187,  
 197–8, 244–5, 534–5, 539–45,  
 550–1, 558–9, 563–4, 568–9, 590–2
- directly decisive for right asserted 245–6,  
 249, 761–3

- government decision not subject to judicial review 187, 199, 247–52, 253–5, 540–1, 544–5
- ‘independent and impartial tribunal’
- forestry authorities 763–4
  - ‘government’ as 254–5, 585–6
  - planning inspector 643–4
  - safeguards 646
- limitations on, requirements
- in accordance with the law 582–3
  - essence of right to remain unimpaired 578–9
  - legitimate aim 582
  - proportionality and 582
- non-disclosure of documents and 320–2, 328–9, 337–41
- oral hearing, need for 587, 610–13
- administrative proceedings and 611–12
  - oral delivery of judgment of European Court of Human Rights distinguished 611
  - waiver of right 587, 610–11
- prerogative acts and 252, 256–7, 258–9
- public interest, matters of 587
- public policy considerations 544–5, 552, 592–3
- unreasonable time-limits, effect 578–83
- within a reasonable time 524–5
- relevant factors
    - complexity of case 600–1, 602
    - conduct of applicant 601
    - conduct of judicial authorities 601–2
- fair trial, translator or interpreter if necessary 874
- family life, right to, gypsies 669
- Finland
- Central Forestry Board/Finnish Forestry and Park Service, powers 76–7, 96
  - International Covenant on Civil and Political Rights (1966), application in domestic law 83–4, 87–8, 123–4, 132–3
- law of
- Extractable Land Resources (555/1981) 1981 96–7
  - Reindeer Husbandry Act, s 2(2) 98
  - Wilderness Act (42/1990) 1990
    - objectives 76
    - s 1 (protection of Sami culture) 76
    - s 3 (state control of logging activities) 76
    - s 7 (Central Forestry Board) 76
- Sami rights
- European Economic Area Agreement (EEA) (1994), effect 101–2
  - extension of state ownership, effect 76
  - reindeer husbandry, effect on of logging and road construction 75–88, 118–33
    - quarrying 92–103, 133
    - Sami as ‘ethnic community’ 123, 132
  - foreign judgment, execution, rights under the European Convention on Human Rights and (1950) 478
- France
- administrative act, classification as 579–81
  - administrative courts and tribunals, jurisdiction over private-law acts 391
  - discrimination
    - nuclear tests, choice of site 800
    - uniformity of treatment across country, relevance 410, 423, 432, 439, 448, 453
  - equality of treatment, general principle of law 391
  - European Convention on Human Rights (1950), application in domestic law 384–90
  - fair and public hearing before an independent and impartial tribunal
    - competent to determine all aspects of the matter, Constitutional Court 586
    - unreasonable time-limits, effect 578–83
  - freedom of association
    - classification of hunters’ association 411–13, 430, 443–4, 454
  - obligation to join
    - as ‘protection of rights and freedoms of others’ 385–6, 415, 423, 444–9, 461
    - in ‘general interest’ 389, 390, 414–17, 454
    - in public interest 456–7, 458
    - right not to join association or union 385, 387, 388, 389, 415–17, 420–1, 423, 427, 430–2, 444, 447–9
  - general principles of law, equality of treatment 391
  - hunting rights
    - compulsory transfer as
      - discrimination 385, 388, 389, 390, 391, 408–10, 417–18, 422–3, 431–2, 440–2, 448, 449–50, 453–4, 455, 458
      - expropriation 455–6
      - interference with enjoyment of property 403, 415, 429–30, 437, 453
    - history 382–3, 458–9

- France (*cont.*)  
 as property right 384, 386, 389, 390, 391, 407, 439, 455–6  
 restrictions on as in ‘general interest’ 384–7, 388, 389, 392, 404–5, 421–2, 427–8, 429–30, 431–2, 438, 452–3, 454, 456–7  
 right not to hunt 387, 391, 392  
 statutory pooling of hunting grounds (description of provisions) 393–401
- law of  
 Civil Code, Art. 544 407  
 Constitution 1958  
 Art. 5 788  
 Art. 15 788  
 Art. 21 788  
 Countryside Code 384, 386, 393, 394–401, 406, 407, 417, 422–3, 438–9, 449–50, 451  
 amendments to 398–9  
 Decree No. 64–46 of 14 January 1964  
 Art. 1 788–9  
 Art. 2 789  
 Art. 5 789  
 Law on Associations (Law of 1 July 1901) 394  
*Loi Verdeille* (Law No. 64–696 of 10 July 1964) 382–3, 392–3, 394, 398  
 compatibility with European Convention on Human Rights (1950) 384–461
- nuclear energy  
 property rights  
 compensation for interference 771–2  
 loss of amenities, relevance 771–2  
 prerogative acts, jurisprudence 789–90  
 private life, home and correspondence, right to, noise and, nuclear power station 772–3
- property rights  
 absolute enjoyment and disposal in accordance with law 407, 439  
 compensation for interference with, relevance 387, 388, 389, 406, 407, 439  
 nuclear energy and 256–7, 771–2  
 right to hunt as 384, 386, 389, 390, 407, 455–6  
 proportionality, property rights and the general interest 405–8, 429–30, 455, 458  
 public interest, freedom of association and 456–7, 458  
 free movement of persons  
 gypsies 669  
 Yanomami Indians 853  
 freedom of association  
 classification as ‘association’ 411–13, 430, 443–4, 454  
 freedom of conscience and 389, 412, 448–9  
 interference with  
 ‘legitimate aim’  
 protection of interests of would-be hunters 413–14  
 ‘protection of the rights and freedoms of others’ 385–6, 415, 423, 444–9, 461, 698  
 public interest 456–7, 458  
 public safety 413–14, 446–7, 659  
 ‘necessary in a democratic society’ 386, 414–17, 447–9  
 ‘prescribed by law’ 413, 446, 489  
 margin of appreciation and 431  
 obligation to join  
 in case of ‘public’ association 387, 430, 443–4, 454  
 in ‘general interest’ 389, 390, 414–17, 454, 457–8  
 protection of property rights and 386, 390  
 right not to join association or union 385, 387, 388, 389, 415–17, 420–1, 423, 427, 430–2, 444, 447–9
- freedom of conscience  
*See also* freedom of expression; information, right to receive and impart  
 ‘belief’ 454, 459–61  
 ‘conviction’, opposition to hunting as 454  
 environmental beliefs and 389, 420–1, 459–61  
 freedom of association and 389, 412, 448–9  
 hunting, opposition to and 389, 415–16, 418, 420–1, 448–9, 454  
 interference with, ‘for the protection of the rights and freedoms of others’ 461  
 state’s right to enforce participation in activity contrary to belief 420–1, 448–9, 450–1
- freedom of expression  
*See also* freedom of conscience; information, right to receive and impart  
 balanced reporting, relevance 487–8, 493–5, 507, 514–15, 519–20  
 ‘duties and responsibilities’ 741  
 good faith 495–7, 501, 508–9, 517–18, 519



- non-disclosure of confidential information 493
- obligation to verify facts 495–7, 504–9, 512–15, 517–18
- protection of reputation of others 493, 494, 495–7, 501–7, 511
- right of reply 514–15, 519–20
- form of expression, relevance 511–12
- interference with
- exclusion order 636–8, 640
  - expulsion and ban on re-entry as 632, 636–8
  - ‘for the protection of the reputation or rights of others’ 489–90, 493, 495–8, 512–13
  - ‘legitimate aim’
    - maintaining the authority of the judiciary 698
    - pressing social need 492, 512
    - prevention of disorder 634, 635–6, 637–8, 639–40, 698, 741
    - territorial integrity 634, 638
  - ‘local requirements’ in overseas territories and 632–3
  - ‘necessary in a democratic society’ 490, 492–8, 520–1, 639–40, 698–701
  - ‘prescribed by law’ 489, 513, 634, 637, 697–8, 701
  - truthfulness of information, relevance 512
- margin of appreciation and 492–3, 498, 502–4, 512
- private life, right to and 512–13, 518
- proportionality
- prevention of disorder 698–701, 702–3
  - prevention of disorder/territorial integrity 636, 639–40
  - protection of reputation and rights of others 497–8, 503–4, 513–15, 516–19
- ‘public interest’ and 482, 497–8, 503–4, 506–7, 508, 515, 516–17
- rule of law and 511
- freedom of information. *See* information, right to receive and impart
- freedom of peaceful assembly 741–2
- French Polynesia
- freedom of expression, interference with
    - expulsion and ban on re-entry as 632, 638
    - for the prevention of public disorder 635–6, 639–40
  - ‘local requirements’ in overseas territories and 632–3
  - ‘prescribed by law’ 634
  - MEP, status in 633–4
- fundamental rights, procedure for protection of in national courts 215
- ‘general interest’
- environmental protection legislation 182, 184–6, 194–6, 384–7, 388, 389, 404–5, 421–2, 427–8, 438, 458, 574, 754, 836
  - hunting rights 426–7, 452, 453, 456–7, 458
  - obligation to join association and 389, 390, 414–17, 454
  - planning provisions 667–8
  - property rights, restrictions on 384–7, 388, 389, 405, 421–2, 427–8, 429–30, 431–2, 438, 454, 455, 532–4, 545–6, 565, 574, 653
  - expropriation permits 533, 538–9
- general principles of law, equality of treatment 391
- Germany
- nuclear materials, storage
    - life, right to and 708–9
  - nuclear waste
    - liberty and security of person, right to and 708–9
    - life, right to and 708–9
- good faith
- freedom of expression and 495–7, 501, 508–9, 517–18, 519
  - interference with property rights and 573, 576
- gravel extraction, compatibility of restrictions on with European Convention on Human Rights (1950) 181–7, 189, 190–6
- Greece, law of, Law No. 653/1977, compatibility with the European Convention on Human Rights (1950) 675–7
- Green Party, right of EU national/Green Party MEP to freedom of expression in French overseas territory 629–40
- grouse shooting, measures to stop
- demonstrations against, lawfulness 690–703
- gypsies
- discrimination 668–73
  - environmental protection legislation and 660–73
  - family life, right to 669–70
  - rights under the European Convention on Human Rights (1950) 655–73
- hazardous substances or activities
- See also* pollution and entries relating to nuclear activity

- hazardous substances or activities (*cont.*)  
 discretionary powers relating to 592  
 EC 'Seveso' Directive and 267–72, 286, 289–90  
 legislation relating to 267–72  
 life, right to and 279–80, 282, 283  
 precautionary measures, need for 591–2  
 private life/home, right to and 278–9, 291–2
- health, risk to  
*See also* life, right to  
 economic development leading to intrusion of outsiders, effect 852–3, 882–3
- from  
 environmental pollution 211, 220, 228–9, 293, 825, 826, 827, 870, 871  
 nuclear tests, duty to monitor 326–9, 357–63, 366–70
- obligation on state to  
 address risks 871  
 impart information on 276–7, 287–90, 329–30, 369–70, 870, 872
- oil exploitation 867–72, 882–3
- hunting rights  
*See also* seal-hunting, criticism of  
 compulsory transfer as  
 expropriation 455–6  
 interference with enjoyment of property 403, 415, 429–30, 437, 453  
 compulsory transfer on basis of size of landholding as discrimination 385, 388, 389, 390, 392, 408–10, 417–18, 422–3, 431–2, 440–2, 448, 449–50, 453–4, 455, 458  
 ecological purpose 452, 456–7, 458  
 freedom of conscience and 389, 415–16, 418, 420–1, 450–1  
 opposition to hunting as belief capable of being manifested 389, 420, 454, 459–61  
 in the 'general interest' 426–7, 452, 453, 456–7, 458  
 history of rights in France 382–3, 458–9  
 as property right 384, 386, 389, 390, 407, 439, 455–6  
 protection under European Convention on Human Rights (1950) 386, 391, 415  
 property rights and 384–7  
 restrictions on as in 'general interest' 384–7, 388, 389, 392, 404–5, 421–2, 427–8, 429–30, 431–2, 438, 452–3, 454, 456–7  
 right not to hunt 387
- social purpose 426–7  
 statutory pooling of hunting grounds in France (description of provisions) 393–401
- hydro-electric power station, effect on Lapps in Norway 733–42
- Indians. *See* Brazil, Yanomami; Canada, aboriginal Indians; Ecuador, indigenous people in
- information, right to receive and impart  
*See also* freedom of conscience; freedom of expression  
 environmental matters 274, 276–7, 282, 283, 285–93, 870  
 as basic human right 288, 870  
 health matters 287–90, 329–30, 357–63, 366–70, 870, 872  
 matters of public interest 494, 511–12  
 non-disclosure  
 fair and public hearing and 320–2, 328–9, 337–41  
 right to life and 279–80, 361–3, 369–70, 870  
 causal effect of non-disclosure, need for 369  
 right to private life/home and 322–5, 328–9, 342–4, 346, 364  
 security considerations 325, 338, 341, 343–4  
 obligation not to interfere 287  
 obligation on state to impart information on environmental matters 274, 276–7, 282, 283, 285–93  
 health matters 329–30, 369–70
- inhuman or degrading treatment  
 level of severity required 369–70  
 nuclear tests, non-disclosure of information 363, 369–70  
 pollution 222, 229  
 requirement by forestry authorities to plant a particular type of tree 754
- Inter-American Commission on Human Rights, recommendations for remedial action by state 871–2
- intergenerational equity, right to bring suit on behalf of future generations 11
- interim measures, purpose, avoidance of irreparable damage 39, 48, 56, 81, 121
- International Civil Aviation Organisation (ICAO)  
 noise abatement measures 148–9  
 implementation in member states 148–9
- International Covenant on Civil and Political Rights (1966)  
 application in domestic law 83–4, 87–8, 123–4, 132–3

- UNHRC's right to review 132–3
- life, right to 6–12, 64–71  
 General Comment No. 14 (nuclear weapons) 69, 108, 114
- minorities, rights of 59–61  
 enjoyment of own culture 18–22, 75–88, 92–103  
 General Comment 103, 132  
 reindeer herding as 102, 123  
 Sami as ethnic community under Article 27 123, 132
- obligations, margin of appreciation, relevance 102–3
- Optional Protocol. *See* United Nations Human Rights Committee (UNHRC), individuals' right of communication
- self-determination 23, 38–9
- sustainable development 865
- International Covenant on Economic, Social and Cultural Rights (1966), sustainable development 865
- Ireland  
 expropriation *de facto*, invalidation of planning permission 574  
 good faith, interference with property rights and 573, 576  
 planning legislation, conformity with European Convention on Human Rights (1950) 574, 575  
 property rights  
 interference with peaceful enjoyment of possessions  
 compensation for, relevance 573–6  
 invalidation of planning permission 572–6
- Italy  
 compensation for interference with property rights, requirements 599–600  
 expropriation *de facto*, temporary restrictions on use of property 598–600  
 fair and public hearing before an independent and impartial tribunal, within a reasonable time 600–2
- hazardous substances  
 EC 'Seveso' Directive (DPR 175/88) 267–72, 286, 289–90  
 life, right to and 279–80, 282, 283
- law of  
 Code of Civil Procedure, Art. 700 275–6  
 Law No. 349/1986 285–7, 289  
 Presidential Decree No. 175/88. *See* hazardous substances, EC 'Seveso' Directive (DPR 175/88) *above*
- Town Planning Act 597, 600
- life, right to, hazardous substances and 279–80, 282, 283
- pollution from hazardous substances, private life/home, right to and 278–9, 291–2
- private life/home, right to, pollution from hazardous substances and 278–9, 291–2
- judicial control. *See* judicial review
- judicial remedy. *See* fair and public hearing before an independent and impartial tribunal
- judicial review  
 importance of 615–16  
 right to a fair and public hearing and 184, 187, 199, 247–52, 253–5, 540–1, 544–5, 621–2
- just satisfaction (ECHR Article 50 [41] proceedings) 187–8, 223–4, 280–1, 418–19, 498–500, 593–4  
*See also* compensation for finding of violation as 188, 280, 593–4  
 specific performance of Convention obligations 280–1
- justiciability. *See* civil rights and obligations; fair and public hearing before an independent and impartial tribunal, genuine dispute (*contestation*), need for
- Lapps  
*See also* Finland, Sami rights; Norway, Lapps in; Sweden, Sami  
 international law, relevance 738  
 numbers, distribution and status 21–2, 737–8  
 'legitimate aim'  
 change in social attitudes and 432  
 economic well-being of the country 156–7, 163, 659, 741, 773, 826  
 operation of international airport 156, 162, 163  
 urban regeneration area 826  
 maintaining the authority of the judiciary 698  
 pressing social need 492, 512, 665  
 prevention of disorder 634, 635–6, 637–8, 639–40, 691, 698, 741
- protection of  
 the environment 574  
 vehicle exhausts 836  
 health 659  
 interests of would-be hunters 413–14  
 reputation or rights of others 489–90, 493, 495–8, 512–13, 659, 698

- 'legitimate aim' (*cont.*)  
 the rights and freedoms of others 385–6,  
 415, 423, 444–9, 461  
 public interest 456–7, 458, 482, 497–8, 503–4,  
 506–7, 508, 511–12, 515, 516–17  
 public safety 413–14, 446–7, 659  
 territorial integrity 634, 638  
 legitimate expectation 185, 193–4, 195, 572  
 liberty, deprivation of  
 'in accordance with a procedure prescribed by  
 law' 690–4  
 certainty of law, need for, breach of the  
 peace 691–3  
 'lawful'  
 in case of peaceful demonstration 694  
 detention by lawful order of a court, refusal  
 to be bound over to keep the  
 peace 694–5  
 'necessary to prevent the commission of an  
 offence', breach of the peace as  
 offence 691  
 nuclear materials, storage 708–9  
 nuclear waste 708–9  
 Yanomami Indians 853  
 life, right to  
*See also* health, risk to; physical integrity  
 environmental pollution and 865–71  
 fundamental to other rights and freedoms 866  
 hazardous substances and 279–80, 282, 283  
 information as fundamental to protection 80  
 nuclear energy and 239–40, 244, 355–6, 362–3  
 nuclear materials, storage 708–9  
 nuclear tests and 108–14, 358–63, 366–70  
 nuclear waste sites and 6–12, 708–9  
 nuclear weapons and 64–71  
 imminent risk, need for 70  
 state's obligation to inform of risk 279–80  
 causal effect of non-disclosure, need for  
 369–70  
 nuclear tests 361–3, 366–9  
 Yanomami 853  
 margin of appreciation  
*See also* proportionality  
 control of use of property and 184–5, 421–2,  
 429–30, 453, 454, 457, 538, 661,  
 836–7  
 determination of proportionality 194, 403–4,  
 409–10, 415, 661–2  
 effective remedy before a national authority  
 and 156–7  
 freedom of association and 431  
 freedom of expression and 492–3, 498, 502–4,  
 512, 698–701  
 interpretation and application of domestic law  
 184–5, 187, 194, 221, 403, 573,  
 685–6, 693  
 justification for interference with right 826  
 national security issues 338  
 review by European Court of Human Rights  
 672  
 minorities, rights of  
*See also* Brazil, Yanomami; Canada, aboriginal  
 Indians; Ecuador, indigenous people  
 in; Finland, Sami rights; Sweden,  
 Sami; self-determination  
 absence of specific provision in European  
 Convention on Human Rights  
 (1950) 739, 742  
 culture, enjoyment and preservation of 18–22,  
 75–88, 851, 873, 888  
 as developed over time 102  
 determination of boundaries as aid to  
 protection 853, 884–5, 888  
 discrimination, freedom from 742, 874  
 economic activity and 24, 102–3, 740–1  
 enjoyment of rights under  
 American Convention on Human Rights  
 (1969) 877  
 European Convention on Human Rights  
 (1950) 740  
 fair trial including translator or interpreter if  
 necessary 874  
 health, economic development leading to  
 intrusion of outsiders, effect 852–3,  
 882–3  
 indigenous peoples  
 special measures to ensure enjoyment of  
 rights, need for 886–7  
 uncontacted groups (in Ecuador) 885–6  
 judicial remedy 870–2  
 measures to protect security, health and  
 integrity 852–3, 871–2  
 participation in  
 decisions affecting 103, 132, 853, 870, 871,  
 888  
 public life 874, 888  
 property rights 740, 741, 874–7, 884–5  
 reindeer herding 102, 123, 132  
 residence 853  
 rights of individual member 23, 39  
 conflict with rights of community as a  
 whole 25  
 UNHRC General Comment 103, 132

- national security issues  
 margin of appreciation 338  
 non-disclosure of information and 325, 341,  
 343–4  
 proportionality and 338, 343–4  
 nationality, 'European citizenship' 633–4, 638–9  
 natural justice, obligation to observe 519–20  
 natural resources, state's right to exploit subject  
 to measures to protect environment  
 and human rights 867–72
- Netherlands  
 civil rights and obligations, rent-determination  
 proceedings 681  
 fair and public hearing before an independent  
 and impartial tribunal, competent  
 to determine all aspects of the  
 matter, district court's decision not  
 to make independent assessment  
 681–7
- law of  
 Housing Rents Ordinance, Schedule IV  
 679–80  
 Nature Protection Act 1967 566–7  
 Nuisance Act 1952 550  
 Soil Cleaning (Temporary Provisions) Act  
 1982 678–87
- nuclear weapons deployment, compatibility  
 with International Covenant on Civil  
 and Political Rights (1966) 64–71
- pollution, soil pollution, right to fair hearing  
 before independent tribunal and  
 681–7
- property rights, interference with peaceful  
 enjoyment of possessions, absence of  
 right to challenge administrative  
 decision 686
- New Caledonia  
 freedom of expression  
 interference with  
 exclusion order 636–8, 640  
 for the prevention of public disorder  
 637–8, 640  
 'prescribed by law' 637
- noise  
 abatement measures  
 European Community 148–9  
 ICAO 148–9  
 Rome Convention on Damage Caused by  
 Foreign Aircraft to Third Parties  
 on the Surface (1952) and 148, 157  
 UK 147–50, 153–7  
 as violation of  
 private life/home 151, 154–7, 211–12,  
 226–9, 772–3  
 right of property 151, 158, 159, 524–5  
 compensation measures 147–8, 163–4, 727  
*ex gratia* payment 730–1  
 mitigation measures 719  
 NNI measure of 146  
 right to freedom from 143–65  
 immunity from suit of Civil Aviation  
 Authority 726
- Norway  
 burden of proof, defamation 488  
 defamation  
 burden of proof 488  
 remedies 483, 486–8, 503, 516  
 truth as defence 482, 486–8, 503  
 unlawfulness of expression, need for 487–8,  
 503, 516  
 European Convention on Human Rights  
 (1950), application in domestic law  
 482  
 freedom of expression  
 balanced reporting, relevance 487–8, 493–5,  
 507, 514–15, 519–20  
 'duties and responsibilities' 741  
 good faith 495–7, 501, 508–9, 517–18,  
 519  
 non-disclosure of confidential information  
 493  
 obligation to verify facts 495–7, 504–9,  
 512–15, 517–18  
 protection of reputation of others 493,  
 494, 495–7, 501–7, 511  
 right of reply 514–15, 519–20  
 interference with  
 for the prevention of disorder 741  
 'legitimate aim', pressing social need 492,  
 512, 826  
 press as public watchdog 493, 495, 496, 507,  
 511, 512, 519  
 'public interest' and 482, 497–8, 503–4,  
 506–7, 508, 511–12, 516–17  
 good faith, freedom of expression and 495–7,  
 501, 508–9, 517–18, 519  
 information, right to receive and impart,  
 matters of public interest 494,  
 511–12
- Lapps in  
 discrimination 742  
 hydro-electric power station, effect on  
 733–42  
 international law, relevance 738

936 *Index*

- Norway (*cont.*)
- private life, home and correspondence, right to 740–1
  - 'property rights' 740, 741
  - status and rights as Norwegians 739–40
  - law of
    - Access of the Public to Documents in the Sphere of the Public Administration (Law No. 69 of 19 June 1970) 470–1
    - Code of Press Ethics 492
    - Constitution, Art. 105 741
  - proportionality, freedom of expression and protection of reputation and rights of others 497–8, 503–4, 513–15, 516–19
  - public interest
    - freedom of expression and 482, 497–8, 503–4, 506–7, 508, 511–12, 516–17
    - information, right to receive and impart 494
  - seal-hunting, criticism of, freedom of expression and 468–520
  - nuclear energy
    - exposure of father to radiation, effect, Gardner Report (Sellafield) 355–6, 362–3
    - legislation relating to 240
    - life, right to and 239–40, 244, 355–6, 362–3
    - prerogative rights relating to 243–6, 247–52, 253–5, 258–9
    - rights to challenge and for compensation distinguished 256–7
    - private life/home, right to and 772–3
    - property rights
      - compensation for interference 256–7, 771–2
      - loss of amenities, relevance 771–2
  - nuclear materials, storage
    - life, right to and 708–9
  - nuclear tests
    - Christmas Island tests (description of procedure) 303–4, 330–3, 354–5, 365–6
    - minimisation of risks 328
    - discrimination, choice of site 800
    - health, duty to monitor 326–9, 357–63, 366–70
    - marine environment, effect on 114
    - Mururoa
      - medical check-ups 785–6
      - monitoring of environment 784–5
      - risks posed
        - evaluation of evidence 797–9
        - fracturing of atoll 786–7, 798
        - marine pollution and contamination through the food-chain 787
        - pollution from atmospheric fallout 787
        - technique 783
      - non-disclosure of information relating to as inhuman or degrading treatment 363, 369–70
      - as interference with private life/home 322–5, 328–30, 342–4, 346, 364
      - fair hearing in respect of pensions claim and 320–2, 328–9, 337–41
      - right to life and 358–63, 366–70
      - right to life and 108–14, 358–63
        - UNHRC General Comment No. 14 114
    - nuclear waste
      - fair hearing, right to 810, 811–13
      - liberty and security of person, right to and 708–9
      - life, right to and 6–12, 708–9, 810, 813
      - private life/home, right to 810, 813–14
      - procedure for disposal 807–9
      - remedies 11–12
    - nuclear weapons deployment
      - justiciability 69–71
      - right to life and 64–71
        - UNHRC General Comment No. 14 69, 108
  - nuisance. *See* noise; pollution
  - oil exploitation
    - effect on indigenous peoples in Ecuador 857–72, 880–5
    - health risks 867–72, 882–3
  - Organization of American States (OAS), minorities, rights of, action to protect 851–2
  - peaceful enjoyment of possessions. *See* property rights
  - 'people'
    - right to self-determination 23, 38–9
      - Indian Band in Canada as 59
  - physical integrity, as civil rights and obligation 243–4, 254–5
    - See also* life, right to
  - political activity, of alien 633–4, 638–9
  - pollution
    - See also* noise
    - dust from construction work 825–7
    - inhuman or degrading treatment, whether 222, 229
    - life, right to and 865–72

- smells and fumes, as violation of private life/  
 home 211–12, 219–22, 226–9
- soil pollution, right to fair hearing before  
 independent tribunal and 681–7
- vehicle exhausts 835–7
- water 588–94
- Portugal
- expropriation *de facto*, declaration of public  
 interest 650–3
- law of, Expropriations Code 1976 650–4
- property rights, interference with peaceful  
 enjoyment of possessions, public  
 interest declaration 650–4
- proportionality, interests of community and  
 individuals' rights 653–4
- precautionary principle 250, 251–2
- prerogative acts
- See also* act of state
- jurisprudence (France) 789–90
- nuclear energy and 243–6, 247–52, 253–5, 258–9
- press. *See* freedom of expression; information,  
 right to receive and impart
- private life, home and correspondence, right to  
 freedom of expression and 512–13, 518
- gypsies and 655–73
- 'home'
- applicable law 825
- gypsy caravan 657
- proprietary interest, relevance 825
- interference with
- in accordance with the law 826
- compensation for pollution/noise 223–4,  
 280, 773
- indirect 772–3
- 'legitimate aim'
- economic well-being of the country  
 156–7, 163, 659, 740–1, 773, 826
- operation of international airport 156,  
 162, 163
- pressing social need 665, 826
- urban regeneration area 826
- Lapps in Norway 740–1
- noise and
- aircraft 151, 154–7, 163–4
- factory operations 211–12, 226–9
- nuclear power station 772–3
- non-disclosure of information relating to  
 nuclear tests as interference with  
 322–5, 328–30, 342–4, 346, 364
- pollution and 211–12, 226–9, 278–9
- dust from construction works 825–7
- hazardous substances 278–9, 291–2
- noise 154–7, 163–4, 211–12, 219–22, 226–9
- smells and fumes 211–12, 219–22, 226–9
- proportionality between right to home and  
 legitimate planning aim 826–7
- authorities' failure to consider 665–7
- serious risk to health, relevance 211, 220,  
 228–9, 293, 825, 826, 827
- steps to protect, obligation 518
- privileges and immunities
- airport operating authority 726
- MEPs 638–9
- property rights
- absolute enjoyment and disposal in accordance  
 with law 407, 439, 453, 565
- as civil rights and obligations 254–5, 560, 592–3
- control of use of property
- deprivation of property distinguished 390,  
 403, 437, 454–6, 531, 536–9, 541,  
 545–6, 598–600
- expropriation permits coupled with building  
 restrictions 528–30, 536–8, 545–6
- limitation to building restrictions 555–6
- in the general interest 182, 184–5, 194–6,  
 384–7, 388, 389, 545–6, 574
- compensation for restrictions on rights,  
 relevance 387, 388, 389, 392,  
 406, 407, 439, 453, 573–6, 773
- compulsory transfer of hunting rights  
 384–7, 388, 389, 402–3, 404–5,  
 421–3, 427–8, 429–30, 431–2,  
 438, 452–3, 454, 455
- expropriation permits 533, 538–9
- requirement to plant a particular type of  
 tree 753–4
- where application geographically limited  
 439, 453
- margin of appreciation 184–5, 420–1, 429–30,  
 453, 454, 457, 538, 661, 836–7
- subject to conditions provided for by law  
 438
- foreseeability of legal provisions and  
 183–4, 193–4, 195
- deprivation of property
- expropriation permits coupled with building  
 restrictions 530–1, 545–6
- limitation to building restrictions 555–6
- in the public interest 545–7
- revocation of gravel extraction permit  
 181–5, 191–4
- freedom of association and 386
- hunting rights 384, 386, 389, 390, 407, 415, 439,  
 455–6

- property rights (*cont.*)
- indigenous people
    - in Ecuador 874–7, 884–5
    - Lapps in Norway 740, 741
  - interference with peaceful enjoyment of
    - possessions 429–30, 453, 454, 457, 538, 661
    - absence of right to challenge administrative decision 686
    - admissibility of complaint in absence of property rights 741
    - aircraft noise and 151, 158, 159, 524–5
    - approval of development plan affecting 597–8
    - compulsory transfer of hunting rights 403, 429–30, 437, 453, 455–6
    - evidence in support of claim, need for 799
    - good faith and 573, 576
    - invalidation of planning permission 572–6
    - ‘necessary in a democratic society’ 421–2, 575–6
    - ‘possessions’
      - economic interests 191
      - long-standing unchallenged rights over land 650
    - proportionality 405–8, 429–30, 455, 458, 532–4, 556, 557–8, 574–5, 580, 663–4
    - public interest declaration 650–4
    - margin of appreciation, control of use of
      - property and 184–5, 421–2, 429–30, 453, 454, 457, 538, 661
    - nuclear energy and 256–7, 771–2
    - restrictions on in the ‘general interest’ 384–7, 388, 389, 404–5, 421–2, 427–8, 429–30, 431–2, 438, 454, 458, 565, 574, 596–602, 653
      - where application geographically limited 439
    - right to hunt as 386, 415, 455–6
  - proportionality
    - See also* margin of appreciation
    - conflicting individual interests 415, 426–7
    - environmental protection and other public and private interests 180, 184–5, 187, 189, 195
    - executive’s freedom of action and interests of individual 616–17, 620–1
    - freedom of expression and
      - prevention of disorder 698–701, 702–3
      - prevention of disorder/territorial integrity 636, 639–40
    - protection of reputation and rights of others 497–8, 503–4, 513–15, 516–19
    - interests of community and individuals’ rights 25, 183–5, 194, 220–2, 343, 386–7, 389, 390, 403–4, 405–8, 415–16, 438–9, 532–4, 598–600, 653–4, 826–7
    - interests of a minority and the dominant group 415, 447–8
    - margin of appreciation and 194, 403–4, 409–10, 415, 661–2, 698–9
    - means and legitimate ends 25, 184–5, 194, 386, 403–4, 405–8, 416–17, 421–3, 431–2, 441–2, 574–6
      - change in social attitudes and 432
    - minority rights and
      - conservation measures 24–5, 60
      - economic development 102–3, 132–3
    - national security issues and interests of individual 338, 343–4
    - property rights and the general interest 405–8, 429–30, 455, 458, 532–4, 556, 557–8, 574–5, 580, 663–4, 754
    - public interest and 503–4, 516–19
    - ‘reasonable’ test 432
    - right to home and legitimate planning aim 665–7
  - public interest
    - See also* ‘general interest’
    - deprivation of property and 545–6
    - fair and public hearing before an independent and impartial tribunal and 587
    - freedom of association and 456–7, 458
    - freedom of expression and 482, 497–8, 503–4, 506–7, 508, 511–12, 515, 516–17
    - information, right to receive and impart 494, 511–12
    - proportionality and 503–4, 516–19
    - public interest declaration as interference with property rights 650–4
    - public life, right to participate in, minorities 874
    - public policy, fair and public hearing before an independent and impartial tribunal and 544–5, 552, 592–3
  - reindeer herding
    - minority cultural right 102, 123, 132
      - effect of
        - conservation measures 24–5
        - logging and road construction 75–88, 118–33
        - quarrying contract 92–103, 133
    - residence, right of, Yanomami Indians 853
  - risk
    - posed by



- environmental pollution 211, 220, 228–9,  
 293, 825, 826, 827, 870, 871  
 intrusion of outsiders 882–3  
 nuclear tests 326–9, 357–63, 366–70, 786–7,  
 798  
 oil exploitation 867–72, 882–3  
 State's obligation to  
 address 871  
 inform of 276–7, 279–80, 287–90, 329–30,  
 369–70, 870, 872  
 monitor 326–9, 357–63, 366–70  
 to health. *See* health, risk to  
 road construction  
 effect of Northern Circumferential Highway  
 on Yanomami Indians 852–3  
 effect on reindeer husbandry 75–88, 118–33  
 measures to stop demonstrations against,  
 lawfulness 690–703  
 rule of law  
 discrimination and 424  
 freedom of expression and 511  
 judicial review of administrative decisions and  
 615  
 seal-hunting, criticism of, freedom of expression  
 and 468–520  
 security of person, Yanomami 853  
 self-determination, as right of 'people' 23, 38–9,  
 59  
 Sellafield 355–6, 362–3  
 separation of powers 615–16  
 Slovak Republic  
 discrimination, different treatment of  
 comparable cases, need for 836–7  
 'general interest', environmental protection  
 legislation 836  
 law of, Regulation 41/1984 (conditions for use  
 of road vehicles) 833–4  
 'legitimate aim', protection of the  
 environment, vehicle exhausts  
 836  
 pollution, vehicle exhausts 835–7  
 social purpose, hunting rights 426–7  
 Spain  
 Constitution  
 Art. 15 211, 212, 214  
 Art. 17(1) 211, 214  
 Art. 18 211, 212, 214  
 Art. 19 211, 212, 215  
 Art. 45 215  
 environmental protection legislation 215–16  
 breach as criminal offence 216  
 European Convention on Human Rights  
 (1950), application in domestic law  
 211–12  
 fundamental rights, procedure for protection  
 of 215  
 law of  
 Criminal Code, Article 347 *bis* 216  
 Decree 2414/1961 Regulations relating to  
 noisome activities 215–16  
 Law on Protection of Fundamental Rights  
 (62/1978) 211  
 noise, private life/home and 211–12  
 pollution (smells and fumes), private life/home  
 and 211–12, 219–22, 226–9  
 private life/home, right to  
 noise and, factory operations 211–12, 226–9  
 serious risk to health, relevance 211, 220,  
 228–9  
 state immunity in own courts 340, 615–16  
 state responsibility  
 for acts and omissions of judicial authorities  
 228, 573, 576  
 for failure to secure rights 221–2, 228–9  
 airport noise 726  
 legislation as basis 24  
 sustainable development, treaties and other  
 instruments recognising principle  
 865–6, 870  
 Sweden  
 civil rights and obligations, challenge to  
 requirement to plant a particular  
 type of tree 762–3  
 conservation measures, other public and  
 private interests, need to consider  
 180, 184, 187, 189, 195  
 expropriation *de facto*  
 expropriation permits coupled with building  
 restrictions 530–1, 545–6  
 revocation of gravel extraction permit  
 183–4, 191–4  
 fair and public hearing before an independent  
 and impartial tribunal  
 competent to determine all aspects of the  
 matter 535–6, 585–7  
 'independent and impartial tribunal',  
 forestry authorities 763–4  
 foreign judgment, execution, rights under the  
 European Convention on Human  
 Rights (1950) and 478  
 hazardous substances or activities  
 discretionary powers relating to 592  
 precautionary measures, need for 591–2

- Sweden (*cont.*)
- inhuman or degrading treatment, requirement
    - by forestry authorities to plant a particular type of tree 754
  - judicial review, European Convention on Human Rights (1950) and 184, 187, 199, 540–1, 544–5
  - law of
    - Constitution
      - Chapter I, Article 2(iv) 18
      - Chapter II, Article 15 18
    - Environment Protection Act 1969 589, 591–2
    - Expropriation Act 1917, compatibility with European Convention on Human Rights (1950) 531–4, 541–3
    - Expropriation Act 1972 533, 543
    - Forestry Act and Ordinance 1979 748, 749–51, 759–61
    - Judicial Procedure Code 536
    - Nature Conservation Act 1964
      - 1973 Amendment withdrawing right to compensation 180, 192
    - compatibility of action under with European Convention on Human Rights (1950) 181–7, 189, 190–6
      - s 1 180
      - s 3 180, 184
      - s 18 180, 184
      - s 40(2) 180–1
    - Reindeer Husbandry Act 1971 18–19
      - s 11 24
      - s 12 24
      - s 12(2) 19, 23–5
  - property rights
    - control of use of property
      - expropriation permits coupled with building restrictions 528–30, 536–8, 545–6
      - limitation to building restrictions 555–6
    - in the general interest, requirement to plant a particular type of tree 753–4
    - requirement to plant a particular type of tree 753–4
    - deprivation of property
      - in the public interest 545–7
      - revocation of gravel extraction permit 181–5, 191–4
    - proportionality, property rights and the general interest 532–4, 556, 557–8
  - Sami
    - compatibility of legislation with International Covenant on Civil and Political Rights (1966) 23–5
    - right to self-determination 23
    - sameby*, right to membership 23–5
    - water pollution 588–94
  - Switzerland
    - air pollution, as violation of right to property 524–5
    - civil rights and obligations, physical integrity 243–4, 254–5
    - fair and public hearing before an independent and impartial tribunal, within a reasonable time 524–5
    - ‘independent and impartial tribunal’ with broad competence
      - Federal Council 251, 254–5
      - Federal Court 256–7, 812
    - judicial review, European Convention on Human Rights (1950) and 247–52, 253–5
    - law of
      - Administrative Proceedings Act 1968
        - s 44 240
        - s 46 240
        - s 48 240, 809–10, 812
      - Civil Code
        - Art. 679 240, 255, 256–7, 523–5
        - Art. 684 241, 523–5
      - Expropriation Act 1930
        - s 1 241
        - s 5(1) 241–2, 255, 256–7
        - s 57 524–5
      - Judicature Act 1943
        - s 97 240
        - s 99(e) 240
        - s 100(u) 809
        - s 103 809
        - s 104 810
        - s 105 810
      - Nuclear Act 1959, s 4(1) 809
      - Nuclear Energy Act 1959 240
    - noise, as violation of right to property 524–5
    - nuclear energy
      - life, right to and 239–40, 244
      - prerogative rights relating to 243–6, 247–52, 253–5, 258–9
    - nuclear waste, procedure for disposal 807–9
    - property rights
      - air pollution and 524–5
      - aircraft noise and 524–5
    - territory integrity, as legitimate aim 634, 638

- United Kingdom
- breach of peace
    - as 'offence' 691
    - common law power of arrest, lawfulness 691–3
  - civil action against Crown by serviceman 315
  - Civil Aviation Authority, immunity from suit 726
  - civil rights and obligations, challenge to
    - planning decision 605–6, 642
  - discrimination, gypsies 668–73
  - environmental protection legislation, gypsies and 660–73
  - fair and public hearing before an independent and impartial tribunal
    - competent to determine all aspects of the matter, High Court 644–7
    - failure to make use of available procedure 321–2
    - 'independent and impartial tribunal'
      - planning inspector 643–4
      - safeguards 646
    - non-disclosure of documents and 320–2, 328–9, 337–41
  - family life, right to, gypsies 669–70
  - free movement of persons, gypsies 669
  - freedom of association, interference with
    - 'legitimate aim', 'protection of the rights and freedoms of others' 698
  - freedom of expression, interference with
    - 'legitimate aim'
      - maintaining the authority of the judiciary 698
      - prevention of disorder 698–701, 702–3
    - 'necessary in a democratic society' 698–701
    - 'prescribed by law' 697–8, 701
    - proportionality, prevention of disorder 698–701, 702–3
  - grouse shooting, measures to stop
    - demonstrations against, lawfulness 690–703
  - gypsies
    - discrimination 668–73
    - environmental protection legislation and 660–73
    - family life, right to 669–70
    - free movement of persons 669
  - health, risk to, obligation on state to impart
    - information on 329–30, 369–70
  - information, right to receive and impart,
    - health matters 329–30, 357–63, 366–70
  - law of
    - Air Navigation (General) Regulations 1985 148
    - Air Navigation (Noise Certification) Order 1987 148, 157
    - Air Navigation Order 1985 148
    - Airport Authorities Act 1975 721
    - Civil Aviation Act 1982
      - Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952) and 148, 157
      - s 41(2) 720, 726
      - s 76(1) 147–8, 153–7
      - s 76(2) 147–8
    - Crown Proceedings Act 1947 315
    - Land Compensation Act 1973 163, 719–20, 721, 727
    - Local Government, Planning and Land Act 1980 821
    - Public Records Act 1958 314–15
    - Town and Country Planning Act 720
  - 'legitimate aim'
    - maintaining the authority of the judiciary 698
    - prevention of disorder 691, 698
  - liberty, deprivation of
    - detention by lawful order of a court, refusal to be bound over to keep the peace 694–5
    - 'in accordance with a procedure prescribed by law' 690–4, 701
    - certainty of law, need for, breach of the peace 691–3, 695–7
    - 'necessary to prevent the commission of an offence', breach of the peace as offence 691
  - life, right to, nuclear tests and 358–63, 366–70
  - London Docklands Development Area, private life/home, right to and, interference caused by construction works 821–7
  - noise, right to freedom from
    - abatement measures 147–50, 153–7
    - compensation measures 147–8, 163–4, 727
    - ex gratia* payment 730–1
    - effective remedy for breach, whether 163–4
  - immunity from suit of Civil Aviation Authority 726
  - mitigation measures 719
  - statutory and common law rights distinguished 153–4, 156–7

United Kingdom (*cont.*)

- nuclear energy, exposure of father to radiation, effect, Gardner Report (Sellafield) 355–6, 362–3
- nuclear tests
  - non-disclosure of information relating to as inhuman or degrading treatment 363, 369–70
  - as interference with private life/home 322–5, 328–30, 342–4, 346, 364
  - fair hearing in respect of pensions claim and 320–2, 328–9, 337–41
  - right to life and 358–63, 366–70
- Pensions Appeals Tribunal, as ‘independent and impartial tribunal’ with broad competence 340–1
- private life/home, right to
  - ‘home’
    - gypsy caravan 657
    - proprietary interest, relevance 825
  - interference with, ‘legitimate aim’, urban regeneration area 826
  - London Docklands Development Area and 821–7
  - non-disclosure of information relating to nuclear tests as interference with 322–5, 328–30, 342–4, 346, 364
  - proportionality 665–7
    - between right to home and legitimate planning aim 826–7
  - serious risk to health, relevance 825, 826, 827
- proportionality
  - freedom of expression and, prevention of disorder 698–701
  - margin of appreciation and 698–9
  - property rights and the general interest 663–4
  - right to home and legitimate planning aim 665–7
- public records 314–15, 319–20
  - difficulty of access as denial of fair hearing 320–2
- road construction, measures to stop demonstrations against, lawfulness 690–703
- state responsibility, for failure to secure rights, airport noise 726
- war pensions
  - as civil right 321, 337
  - entitlement 313

- non-disclosure of documents 314
  - fair hearing and 320–2, 328–9, 337–41
  - procedure for claims and appeals 313–14
- United Nations Human Rights Committee (UNHRC)
  - admissibility, requirements
    - See also* individuals’ right of communication *and* standing *below*; exhaustion of domestic remedies
    - ‘being examined under another procedure of international investigation’ and 113
  - clarity of claims 59
  - Committee’s ability to ascertain validity of claim and 22, 114
  - sufficient substantiation 23, 81, 96
  - individuals’ right of communication in respect of alleged violation of rights of
    - See also* standing *below*
    - abuse of right 59
    - group of individuals 59, 70
      - actio popularis* distinguished 70
    - members of minority 23, 39
    - self-determination 23, 38–9
  - interim measures. *See* interim measures
  - remedies, State Party’s intention to rectify violation 59
- Rules of Procedure
  - 86 (interim measures) 39, 48, 56, 81, 96, 121
  - request to reconsider 121–2
  - 87 (admissibility) 22, 69–70, 113
  - 91 (information and observations on admissibility) 7, 17, 78, 109, 121
  - 93(4) (reconsideration of admissibility) 39–40, 48, 56, 58, 81
- standing
  - See also* individuals’ right of communication *above*
  - actuality of threat, need for 70, 81, 113–14
  - submission on behalf of future generations 11
- vehicle exhausts. *See* pollution
- war pensions
  - as civil right 321, 337
  - entitlement 313
  - non-disclosure of documents 314
    - fair hearing and 320–2, 328–9, 337–41
  - procedure for claims and appeals 313–14