

## 30 ARTICLES ON THE 30 ARTICLES

### THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

#### Article 9: Freedom from Arbitrary Detention

Can you get locked up for being a poet? Yes, in the Soviet Union in 1964. Joseph Brodsky, now considered one of Russia's greatest poets, was hauled into court in Leningrad, accused of being "a pseudo-poet in velveteen trousers" – specifically a freeloader who contributed nothing to society. Soviet judges simply could not see the value of poetry. Despite having no actual mental illness, Brodsky was sent off for two stints in psychiatric prisons where he was effectively tortured – one of thousands to suffer such a fate in the Soviet Union.

The abuse of psychiatry to keep dissenters in line is one of several violations covered under Article 9 of the Universal Declaration of Human Rights, which basically says no one can be put in prison and kept there without a good reason. It applies not only to prisons, but also to an increasing number of places where people might be held without a fair trial or clear sentence: asylum detention centres, immigration facilities and drug treatment centres.

The use of "political psychiatry" – defining opposition as an ailment and confining dissidents in psychiatric hospitals – temporarily disappeared after the collapse of the Soviet Union in 1991. However, a small number of countries have been accused of still abusing psychiatry to control their citizens.

Freedom from arbitrary detention is closely related to other sections of the Universal Declaration of Human Rights (UDHR): Article 3's right to life and Article 5's ban on torture and cruel, inhuman or degrading treatment or punishment. Although the UDHR never uses the term *habeas corpus* (Medieval Latin for "you have the body"), the ban on arbitrary detention also harkens back to the centuries-old right of every inmate to be brought to court so it can be determined whether they are unlawfully imprisoned and should be released.

The right to personal liberty under the UDHR is not unlimited, but detention must be in accordance with national and international law. Authorities should only detain people following clear, public procedures. To avoid being classified as arbitrary, detention must be appropriate, predictable, proportionate, necessary – and based on justice. Thus, countries can deprive people of liberty – within certain limits – while they await trial, and after conviction and sentencing, among other situations.

Detention is considered arbitrary if there was no fair trial, or there is no legal basis for it, as when a person is kept in custody after serving their sentence. Significantly, no one should be locked up simply for exercising a number of rights covered by the UDHR, such as freedom of expression (Article 19), freedom of religion (Article 18), or the right to claim asylum (Article 14).

“The right to personal liberty is fundamental and extends to all persons at all times and circumstances, including migrants and asylum seekers irrespective of their citizenship, nationality or migratory status.”

– UN Working Group on Arbitrary Detention,  
February 2018

The United States has been accused of arbitrary detention in its so-called “War on Terror,” particularly at its Guantánamo Bay military prison in Cuba, and other sites around the world. More recently, the UN Working Group on Arbitrary Detention has called on the U.S. to protect the rights of young migrants.

Australia has repeatedly been criticized for routinely detaining asylum-seekers, including one stateless man who was held for nine years without charge or trial. In 2018, the Working Group took the extraordinary step of calling on Australia to review its domestic laws, and ruled it had breached a number of international human rights laws. One Iranian man, it said, has been held in detention simply for exercising the right to seek asylum.

It’s not only immigration detention that is a concern. On a 2013 visit to Hungary, for example, the Working Group found that an unreasonable number of people were routinely held in detention for a year or longer before their trials on criminal charges. Pre-trial detention, it said, must be the exception and not the rule.

With Article 9, part of the large section of the UDHR (Articles 6-11) devoted to standards for the administration of justice, the Universal Declaration makes clear that a person’s freedom does not automatically evaporate on arrest or conviction. The person still has rights in court or behind bars – and the right to hold arresting or imprisoning authorities to specific standards.

ENDS

**This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70<sup>th</sup> anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.**