

The European Convention on Human Rights explained ...

Written by Dr Peter Jepson.

There is often a great deal of confusion in the minds of law, politics, and citizenship, students when it comes to the European Convention on Human Rights. For example, many students confuse the ECHR with the laws of the European Union, when it has nothing at all to do with the EU. The purpose of this article, is to provide a brief explanation of issues associated with the European Convention on Human Rights.

The European Convention on Human Rights.

The ECHR was created in the shadow of the second world war. It was designed to provide citizens with rights against states, in the hope of trying to prevent and discourage the past horrible abuses towards Jews and others. Thus, the ECHR seeks to provide citizens with a right to freedom of expression, freedom of religion, a right to a fair trial, a right of liberty, freedom from slavery, freedom from state abuse, torture, etc.¹

ECHR History.

The European *Convention* of Human Rights was first adopted under the auspices of the 'Council of Europe' in 1950. While the European *Court* of Human Rights was established in 1959, its first case was heard in 1960.² It is important to note that the 'Council of Europe' should not be confused with the 'Council of the European Union' or the 'European Council'. Indeed, the European Union is not a party to the ECHR and has absolutely no role in the administration of the European Court of Human Rights.

While the United Kingdom were an official signatory to the European Convention on Human Rights in 1950, it was not introduced into UK domestic law until the Human Rights Act of 1998.

Claims associated with the state.

There are a great number of misconceptions, often in the press, about the significance of the European Convention on Human Rights. Firstly, it is important to recognize that the ECHR is concerned with human rights abuses by the state and not by private companies or individuals. So, for example, if your state school or College were to deny you freedom of expression, then you may have a claim against them because they are directly associated with the state. If the same denial of freedom was undertaken by McDonald's, then there can be no abuse of the Human Rights Act claim - because McDonald's is a private company and not part of the state.

¹ See the European Convention on Human Rights - <http://www.hri.org/docs/ECHR50.html>

² Lawless v Ireland.

Decision of the European Court of Human Rights are not binding.

Secondly, it is also very important to recognize that the decisions of the European **Court** of Human Rights are not binding on UK domestic courts. Indeed, so far as judicial precedent is concerned, the decisions in cases of the European Court of Human Rights are persuasive precedent only. Which means that a judge can choose to follow the case decision if he considers it is just and wise to do so, but s/he is not bound to follow the case.

Secondary legislation must comply with ECHR.

As a result of the Human Rights Act 1998, all decisions of delegated authorities (i.e. Scottish Parliament, Welsh Assembly, Local Government, Government Ministers operating under delegated authority etc) must comply with the European *Convention* on Human Rights. If any of these bodies/individuals fail to comply with the European *Convention* on Human Rights, the legislation can be struck down by a domestic court as being unlawful - since, as per the HRA 1998, all secondary legislation must comply with the European *Convention* on Human Rights.

UK Parliament is Supreme.

That being said, what is vital to recognize is that Parliament is NOT bound by the ECHR. Indeed, because a current Parliament cannot bind a future Parliament, it is recognized that Parliament remains supreme and it has the power to pass any law it wishes. However, what the Human Rights Act 1998 does is set out a procedure for the passing of domestic legislation to ensure that there is a level of consistency with the purpose behind the European *Convention* on Human Rights. So, when a Government Minister introduces a bill before Parliament he is obliged to declare, on the face of the bill, if the proposed legislation is compatible with human rights. If it is and it is passed, then fine. If s/he says it is not compatible with human rights the bill can still become law if it is carried through Parliament. The difference is that any Minister can expect a rough passage through Parliament if he were to declare "this bill is not compatible with human rights". That being said, there may be times when MP's would be willing to pass legislation that abuses human rights - say for example when it comes to the rights of convicted terrorists.

Once that Parliament has passed a bill into law, any affected individual may complain if s/he considers their rights have been abused by an Act of Parliament. If the High Court, or above, agree that there has been an abuse of human rights then the court has power to declare that the offending Act, or a section of the Act, is 'incompatible' with human rights. Such a decision of a court does not provide compensation or require a change in the law. All it does is call upon the relevant Government Minister to consider if the law should be changed due to incompatibility with human rights. If the Minister considers there is a need to change the law, i.e. so as to comply with human rights, then ONLY Parliament has the power to change the law. To this extent, the beauty of the Human Rights Act of 1998 is that it ensures that Parliament is supreme, over the judiciary, when it comes to human rights legislation.

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