

**UCL**

**Why it matters that the Conservatives should  
support the European Convention on Human Rights**

by

**The Rt Hon Dominic Grieve QC MP**  
Attorney General 2010-2014

**3 December 2014**

**DENYS HOLLAND LECTURE THEATRE**

**UCL JUDICIAL INSTITUTE**



**The Constitution Unit**

**STRICTLY EMBARGOED TO 19.00 3 DECEMBER 2014**

Talk to University College London

By the Rt Hon Dominic Grieve QC MP

**Why Human Rights should matter to Conservatives**

3<sup>rd</sup> December 2014

**Introduction**

I am most grateful for the kind invitation that has been extended to me tonight by both the UCL Constitution Unit and Judicial Institute to come and talk about the operation of the ECHR and the Human Rights Act from a Conservative perspective. Throughout my time in politics, but particularly after I became Attorney General in 2010 I have come to value the work that you have done and my opportunities to learn from your events and publications.

In speaking on human rights as a Conservative, I am conscious that it will be argued that my own perspective and that of others in my Party may differ on this matter! Perspectives on policy issues are, however, rarely uniform in any political party. When I go to address Conservative audiences away from Westminster, views on the merits or demerits of human rights law are more complex and often more nuanced than the reading of a tabloid newspaper might suggest. An attack on the abuse of human rights law by litigants who may be regarded as undeserving, is likely to attract loud applause. But as a recent You-Gov opinion poll suggests, lay people are quite capable of identifying that the

issue has no one answer and they are of divergent views in respect of the different questions that a human rights legal framework raises. On being questioned 78% of Conservatives wanted to see the Human Rights Act repealed and replaced and 75% considered that British courts should not have to take account of rulings of the Strasbourg Court. But the vast majority supported each one of the 10 key rights in the Convention. Even the allegedly unpopular right to a private and family life in Article 8 was endorsed by 78% of those interviewed.

This strengthens me in my view that, despite the Conservative leadership's recent announcement of fundamental change to both the HRA and the national relationship with the ECHR, there is much that remains undebated and misunderstood about both.

I will try therefore tonight to lay out reasons why, while not free of imperfections, the ECHR and its direct application in our law through the HRA is of enormous benefit to our country and our collective wellbeing. I should emphasise in doing so that this is not intended to be an academic's presentation, although I trust I can inform my opinion with reasons based on evidence, as a lawyer should. The politician in me is determined that this argument can and must be made with some passion because I believe that it goes to the heart of our identity as a nation and of our national interest.

## **Why did the United Kingdom sign the Convention?**

In considering the benefits of the Convention, a good starting place is the reasons why we signed up to it in the first place. Much ink has been spilt on whether the Convention was or was not a near perfect British construction, willed by Churchill and David Maxwell Fyfe and crafted by British barristers; or, as I sometimes hear, some unfortunate importation of foreign abstract concepts of “Rights” alien to our national common law tradition of liberties and dangerously undermining of them.

There is no doubt that the drafting of the Convention and our adherence to it were controversial. The British participants looked to establish a detailed list of clearly defined rights, whereas the French and some other nations preferred a general list of principles that would be left to a supranational court to clarify by its decisions. There was unease at how it would work.

Contemporary Foreign Office advice expressed fears that the Convention would be subverted. It said:

“To allow Governments to become the object of such potentially vague charges by individuals is to invite Communists, crooks and cranks of every type to bring actions”.

And yet we signed and it is not difficult to see why.

For all the criticisms, the 10 key rights originally protected under the Convention were, with the exception of Article 8, in reality a classic exposition of the “Liberties” which successive generations of British politicians and the British public generally have insisted are our shared inheritance. How well they were in practise maintained through the centuries however is questionable;- there have been plenty of examples of their violation. But they are part of an entirely distinctive national narrative, embodying the Common Law; its confirmation through Magna Carta and its numerous reissues in the Middle Ages; the outcome of the conflict of authority between King and Parliament in the 17<sup>th</sup> century in the Petition of Right; the abolition of Star Chamber and the prohibition of torture; Habeas Corpus and the Bill of Rights of 1689, Lord Mansfield’s ruling on slavery in Somerset’s case and the Commentaries of William Blackstone. This national narrative has been so powerful that it has acted as a an almost mythic restraint on successive British governments trying to curb freedoms when tempted to do so by threats to public order or national security as we saw over 90 and 42 day pre charge detention under the last Government.

Doubtless it is that, in the years after the Second World War, most Britons considered that this largely political tradition offered a superior level of protection for freedom than any Continental model. Paul Johnson correctly

identified the underlying attitude in his History of the English Speaking People when he wrote:

“the extraordinary attachment of the English to their system of law (if indeed it can be called a system), the positive affection it inspires, the awe inspiring confidence, often unwarranted, which they repose in its ability to do justice, the tenacity, indeed ferocity with which they refuse to modify it with foreign importations is one of the most important national characteristics.”

He went on-“In a sense the law is the only true English religion-the only body of doctrine in which the mass of ordinary Englishmen have consistently and passionately believed. It is impossible to turn to any period of English history where written records have survived, without finding a huge and dogged conviction in the adequacy of the law if only, and this the vital qualification, it is administered according to tradition and custom. Complaints about the law are purely conservative in nature. It is not being observed, it has fallen into disuse, it is being obscured and perverted by innovation. Grievances are strident and incessant but they are invariably directed at agents..... not against the law itself.....provided that modern accretions are periodically removed.”

So in signing up we were doing something novel. We were intent at the risk of innovation, through the creation of rights that we ourselves enjoyed as liberties, not so much on protecting ourselves but on setting a standard of behaviour for

states towards their citizens which would prevent the re-emergence of tyranny in Western Europe.

But as we know today, the ECHR has indeed created its own dynamic. By converting liberties to rights it has facilitated their ownership and assertion by individuals rather than their mere invocation as abstract principles against administrative or policy decisions. The anger of the tabloid press at undeserving claims is the inevitable corollary that claims by the deserving can now be made. Deservingness cannot be determined a priori. Some argue that this has taken the interpretation of the Convention by the Strasbourg Court and our own courts to places unintended by its original signatories. But it seems to me that it was quite clear from the outset that this was a possibility and yet the United Kingdom signed up and then continued to sign up to Protocols to the Convention and most importantly to recognise the right of individual petition in 1966, with little or no argument to the contrary. Indeed, as Hansard reveals the principal advocate on the floor of the House was Terence Higgins, a notable right of centre Conservative-almost certainly because he feared the curbs on freedom a socialist government might introduce.

This should not surprise us either. It has been the intention and policy of successive United Kingdom governments over the last two centuries to seek to make the World a less dangerous, more predictable and better place by encouraging the creation of international agreements governing the behaviour of

States. When I was Attorney General, I enquired of the Foreign Office as to how many Treaty commitments we were adherent. They were unwilling to go back before 1834, but indicated that since then they had some 13,200 records of treaties and agreements that the UK had signed and ratified. Many thousands are still applicable and range in importance from the UN Charter to local treaties over fishing rights or maritime access. Over 700 contain references to the possibility of binding dispute settlement in the event of disagreements over interpretation-as does of course the ECHR. And with the passing years these Treaties, be they the UN Charter and the International Convention on the Prohibition of Torture or the creation of the International Criminal Court, have dealt not just with inter-state relations but standards of behaviour between a State and those over whom it exercises power. So important has been this treaty making that the Ministerial Code specifically states that it is the duty of UK ministers and civil servants to respect our international obligations. It is this duty which is now seen in Lord Bingham's eighth principle, as being a key underpinning of the Rule of Law. Thus, in 1966 the misgivings that the Wilson government had that in allowing individual petition, problems would be created for the state, were outweighed by the national interest in promoting this wider agenda.



## **The Convention in Europe**

It seems to me to be noteworthy that in the current debate on the impact of the Convention on our country, very little is said about its impact on the other signatory states, the very thing which underlay our decision to sign up. Yet a moment's examination shows that it has been profound and beneficial. Some of the earlier cases such as *Marckx v Belgium* 1979 6383/74 on the rights of illegitimate children or *Ireland v UK* 1978 5310/71 on how interrogation techniques constituted inhumane/degrading treatment are well known landmarks in the development of human rights norms for member states which we now take for granted.

But since the adherence of so many states that had been previously governed by Communist tyranny, the Convention and the Strasbourg court have been instrumental in facilitating the creation of the Rule of Law in environments where it has never previously existed.

Let us look at just a few examples-familiar I am conscious to some of you here but largely unknown to most of the British public:

Last year in *Mammadov v Azerbaijan* 15172/13 an opposition leader in that country published a blog post on a riot that contradicted the government's version of events. He was subsequently accused of inciting the riot in question and was imprisoned for seven years for endangering the lives of public officials.

The court held that there had been breaches of Article 5(1) as there was no basis for the reasonable suspicion required to justify his arrest and detention, of article 5(4), as his claims as to the unreasonableness of his arrest had been dismissed without proper consideration-the court merely copying out the prosecutor's submissions on the matter; and of article 6(2) in that the State had put out a press release indicating his guilt before he was tried.

In *Avilkina v Russia* 1589/09, the St Petersburg local authority was found to have violated Article 8, in ordering all hospitals to disclose medical information on those who had refused blood transfusions with the intention of rooting out Jehovah's Witnesses. It was held that there had been no pressing need for this disclosure of confidential medical information, no prior opportunity to object and no effort to balance the right to ensuring public health with the privacy of the applicants.

In *Campeanu v Romania* 47848/08, the court held a violation of Article 2 where a Romanian young man, abandoned as a child, HIV positive and mentally disabled was transferred aged 18 from a centre for disabled children to a neuropsychiatric hospital where he was found by a local NGO, in an unheated room, with a bed with no bedding, dressed only in a pyjama top and with no assistance to eat or use the lavatory. He died the same day.

And I could go on, through a series of cases ranging from beatings up and torture in Russian police stations, in the context of a complaints system that

does not work (*Lyapin v Russia* 46956/09) to a Ukrainian local authority rendering the applicant's house uninhabitable and his land unusable by the construction and development of a cemetery that breached environmental health laws and where compensation was refused (*Dzemyuk v Ukraine* 42488/02) and all this is before we look at those major cases such as *Abu Zubaydah* and *Al Nashiri* where Poland was found to have participated in holding terrorist suspects in secret prisons and torturing them after they had been unlawfully rendered there by the United States.

Looking at the Strasbourg Court website, the most recent judgments, with cases concerning breaches of Articles 2 and 3 in Romania in not investigating the torture and death of demonstrators at the hands of the police in 1990 (*Mocanu and others* 2014 10865/09) or Articles 8 and 14 in the Greek government not including same sex couples in new "civil union" legislation (*Vallianatos and others* 2014 29381/09) show the continuing impact of the Strasbourg Court in pursuing this work.

It has been argued, of course, that the Strasbourg Court is failing because so many of its judgments remain unimplemented. It's a matter on which our own Prime Minister commented when he addressed the Council of Europe during our presidency in 2012, emphasising the need for States to comply. But this cannot be blamed on the Court. Furthermore, whilst the number of unimplemented decisions is currently over 11000 with the chief culprits in

descending order Italy, Turkey and Russia, over 9000 are repetitive cases and the evidence suggests that with political pressure from the Council of Ministers, most will eventually be implemented and that the authority of the public judgments leads to beneficial changes in behaviour by the authorities in the states concerned. For all its challenges the Convention has proved and is proving to be an effective tool-perhaps the single and most cost-effective one currently available for promoting human rights on our planet.

### **Human rights in the United Kingdom and the Conservative Party paper**

And this brings me to the next question of how successful or not the ECHR has proved to be for our own country.

From reading the paper recently published by the Conservative Party concerning the state of domestic human rights, the message is that all is not well. The intention behind the Convention is lauded. But while it is described as “an entirely sensible statement of the principles which should underpin any democratic nation” and acknowledges that the UK had a key role in its drafting, it then goes on to assert that “Both the recent practice of the Court and the domestic legislation passed by Labour (that is to say the HRA) has damaged the credibility of human rights at home.” It accuses the Strasbourg Court of mission creep and outlines a programme of fundamental change, advocating the repeal

of the HRA and its replacement by a new Bill of Rights which would “clarify” rights under Articles 3 and 8, to prevent their abuse in respect of deportation cases and confine the right to invoke a breach of human rights “to cases that involve criminal law and the liberty of an individual, the right to property and other serious matters”, providing “a threshold set by Parliament below which Convention rights will not be engaged”. It wants to limit the reach of human rights cases to the UK removing the activities of British armed forces overseas from its scope. It also advocates breaking the link between British courts and the Strasbourg Court so that no account should be taken in future of the rulings of the Strasbourg Court and asserts that the UK will negotiate a new status for itself under the Convention where Strasbourg Court judgments are merely advisory and no longer an international legal obligation to implement or, if this cannot be achieved, leave the Convention entirely.

Now criticisms of the workings of the Strasbourg Court are not confined to politicians. From Lord Hoffman in his speech to the Judicial Studies Board in 2009, and Lady Justice Arden’s Thomas More lecture of the same year and more recently the views expressed in speeches by Lord Judge and Lord Sumption, a critique has been made that the Strasbourg Court has failed on occasion to respect national differences of interpretation of the Convention which should be allowed under the principle of the margin of appreciation and failed to appreciate sufficiently the practical limits of its authority if it gives

judgments which contradict settled democratic will in areas where the margin of appreciation might be reasonably considered to apply.

These criticisms are valid. The Strasbourg Court has shown signs of being the victim of its own transformation from an international tribunal dealing with a very limited number of cases into a final court of appeal for some 700 million people. In service to what has been an understandable desire to protect human rights in countries with challenging records, it has sometimes micro managed the Convention too much and sought to impose a uniformity of practise that is not desirable in the interpretation of an international treaty that specifically gives to national parliaments and courts the primary obligation to uphold the Convention's terms. The problem caused by the Strasbourg Court's decision on prisoner voting in the case of *Hirst v UK* 2005 740/01 is a good illustration. In itself the issue is largely symbolic as the question of whether or not convicted and sentenced prisoners should have the vote is of very little practical consequence. But symbols can matter in the context of parliamentary democracy and the judgment in my opinion was an unnecessary interference with a policy that enjoys overwhelming parliamentary support and cannot I believe be categorised as a substantial interference with a human right. I am sorry that I was not able to get it fully reversed when I intervened in the case of *Scoppola v Italy* 126/05 in 2012 on the same point.

But I have to say that as a lawyer this is not the first time I have disagreed with a court decision in a case in which I have appeared. Courts are human constructs. Their decisions are as open to criticism as any other and lawyers and parties on the losing side will usually be discontented with the outcome. Yet in a number of key cases involving this country, the court has made adverse findings which an overwhelming majority would now conclude were correct. I have never been lobbied by colleagues on the grounds that *S and Marper v UK* 30562/04 in 2009 in which the Strasbourg Court held that the UK policy in England and Wales of retaining indefinitely the DNA and fingerprint profiles of acquitted individuals (the only jurisdiction in Europe to do this) was unjustified, was wrongly decided. I have never for that matter been told that the decision of the Strasbourg Court in *Dudgeon v UK* 7525/76 in 1981 which held that the criminalisation of homosexual acts in private in Northern Ireland breached the Convention was wrong, despite it being very controversial there at the time.

Furthermore, there is evidence that some of the problems disclosed by *Hirst*, which is a judgment that goes back to 2005, are being addressed. In 2012 I helped Ken Clarke as Lord Chancellor negotiate the Brighton Declaration which sought to address the backlog of cases, the quality of judicial appointments and most importantly got the principles of subsidiarity and the margin of appreciation into the preamble of the Convention so as to steer the Court towards avoiding the type of decision we saw in *Hirst*. We might have achieved

more and changed the text of the Convention itself if our fellow signatory governments with which we negotiated and which shared our goals, had not been deterred by their domestic NGOs from full co-operation with our agenda because of a fear that we wished to diminish the Court's effectiveness. This was a mistaken fear then, but the most recent Conservative Party paper is going to make further progress still harder.

It is a bit early to say if the Brighton Declaration will bring about the changes we intended. But there are signs that we were going in the right direction. The backlog of cases is being addressed. 99.9% of the cases brought against the UK in 2013 were struck out as inadmissible. There has been solid progress on implementing judgments. Furthermore the important shift by our own national courts away from the principles in Ullah defining the requirement of "take account of" as being the close mirroring of Strasbourg decisions, has initiated a dialogue that has led to a number of cases in which the Strasbourg Court has shown deference to the reasoning of our own. We can see this in the way the Court moved from a condemnation by a chamber of the Court of our rules on hearsay in *Al Khawaja v UK* 26766/05 in 2009, to the acceptance of the Supreme Court decision when the Grand chamber revisited *Al Khawaja* in 2011, following the rejection of its previous judgment by the Supreme Court in *Horncastle*. Proactivity by our own judges pays jurisprudential dividends.



Furthermore, in the vast majority of instances, carefully reasoned decisions by our own superior courts are usually accepted by the Strasbourg Court. Abu Hamza was no more successful in arguing that his trial in the UK for soliciting to murder was unfair due to adverse publicity than he was in challenging his later extradition to the United States. And while I accept that the decision of the Strasbourg Court in respect of the deportation of Abu Qatada in 2012 may have been irritating for ministerial colleagues in adding further cost and delay to the process, it not only allowed his eventual departure to Jordan but helped ensure reforms to the Jordanian criminal justice system that were not only much needed but overwhelmingly welcomed by all right thinking persons. Seeing that promoting human rights abroad has been a central plank of the foreign policy of successive British governments for decades, including in particular the present one, it had reason to join in that welcome. But the response was to view the glass as half empty, when it was to my mind rather more than half full. This pessimism was also illustrated by the response to the judgment of the Strasbourg Court in the Animal Defenders case on our domestic ban on political advertising and its potential infringement of Article 10 on the Freedom of Expression. The Court upheld our own court's view that it was permissible and fell within the margin of appreciation for a settled national practise commanding support from all political parties. But the reaction from some here was that it was outrageous that this was only a majority decision.

There is of course a more fundamental objection raised to the ECHR by some in my Party. This focusses on its interpretation as being a “living instrument” which it has been argued has developed to undermine the intentions of its signatories. The implication if taken to its logical conclusion must be that Convention should have remained fixed in the moral and ethical norms of 1950.

Judicial interpretation to reflect modern times is not new and is rooted in our common law tradition. As Baroness Hale stated in her Gray’s Inn Reading of 2011: “...it is in a comparatively rare case that an Act of Parliament has to be construed and applied exactly as it would have been applied when it was first passed. Statutes are said to be always speaking and so must be made to apply to situations which would never have been contemplated when they were first passed. Thus in 2001, “a member of the family”, first used in 1920, could be held to include a same sex partner. In 1998, “bodily harm” in a statute of 1861 could be held to include psychiatric harm. And in 2011, “violence” could be held to extend beyond physical violence into other sorts of violent behaviour.

And she went on:

“in all these examples, the court is seeking to further the purpose of the legislation in the social world as it is now, rather than as it was when the statute was passed”.

This is exactly what the Strasbourg Court has done in cases such as *Rantsev v Cyprus and Russia* 25965/04 in holding that trafficking fell within the definition of slavery in Article 4 and placing appositive obligation on states to halt it. The same principle was used in *S and Marper v UK* in identifying the blanket retention of DNA as being in breach of the right to a private life in Article 8, even if the existence of DNA was not known in 1950.

Another complaint that I have received from colleagues is the Convention is encroaching on our ability to conduct military operations. This, the paper seeks to address by restricting to our own national territory the operation of any replacement Bill of Rights.

I recognise that the bare possibility of a claim being successful through the extension of the ECHR to the deaths or injury of our own servicemen abroad in an active service setting, arising from the judgment in *Smith and others v MOD* in the Supreme Court in 2013, has raised understandable concerns. I also agree that the overlap between international humanitarian law and the ECHR lacks clarity, so that uncertainty exists as to when the ECHR will apply to the investigation of improper acts against enemy military or civilians abroad. But the principals of the standards of behaviour required of our own armed forces in conducting operations cannot be diminished by restricting the ECHR territorially, even if it might deal with issues such as the legality of detention arising from cases such as *Al-Jedda*-and I note in this respect that the most

recent judgment in *Hassan v UK* has clarified the law helpfully on the compatibility of detention under the Geneva conventions with Article 5 of the Convention. I strongly suspect therefore that restricting the scope of the Convention territorially will not deliver the benefits assumed in the paper.

I also note the most recent suggestion that a new Bill of Rights could be used to give greater protection to the Press. No detail has been given and I wonder if study has been made of the existing case law. From *FT Ltd v UK* in 2010 821/03 on, there is ample authority to show that Article 10 rights are available to protect journalists particularly with reference to their sources. I will be interested to see what else is on offer. In any case it could be offered without any change to the HRA at all.

Indeed looking carefully at the paper my Party has produced on changing our relationship to the ECHR, I am struck by the paucity of concrete examples of Strasbourg mission creep that are identified, to justify a case for change.

Complaint is made that the Strasbourg Court has ruled in *Dickson v UK* 44362/04 2007 that the UK government should allow more prisoners to go through artificial insemination with their partners in order to uphold their rights under Article 8. This sidesteps the fact that this was already allowed on grounds of maintaining family relationships before the ruling and that the ruling does not confer an absolute right to this service at all with the Justice Secretary considering each case on its merits. As of 2013 it had led since 2007 to just 13

applications and only one had been allowed. Prior to the judgment there had been 3 allowed out of 28.

Secondly it is alleged that the Strasbourg Court has made the imposition of Whole Life Tariffs impossible because in its judgment in *Vinter v UK* 66069/09 it has insisted that there had to be some possibility of review of such sentences in order to ensure compliance with Article 3 of the Convention.

Yet as was made clear by the Court of Appeal in the case of *R v McLoughlin* [2014] EWCA Crim188, such a review mechanism has always existed and has to be operated compatibly with convention rights by the Justice Secretary or risk Judicial Review. At present therefore, this example of mission creep is hypothetical and of no practical effect.

Finally the Convention is blamed for allowing foreign nationals who have committed serious crimes in the UK to use the qualified rights (by which I take it to refer to the rights under Article 8) to remain here. It is this along with proposals to reform the application of Article 3 on the Prohibition of torture in deportation cases which forms the heart of the proposals for change in the paper.

I am in entire agreement that Article 8 has been invoked too often to try to justify foreign criminals escaping deportation at the end of their sentences. But

this has little to do with the ECHR and a lot more to do with the failure of the UK Borders Act 2007 to address this issue as intended. This was why Parliament has now enacted the Immigration Act 2014. It is intended to be compatible with our adherence to the Convention. It makes clear within that framework Parliament's perception of what the public interest requires in such cases. Where a sentence of at least four years has been imposed, the public interest requires deportation unless there are very compelling circumstances over and above the cultural and family relationship ties that are set out for foreign criminals sentenced to a lesser period of imprisonment. If it works and the Government believes it will, then it is difficult to see how the proposal in the paper which promises to put the text of the Convention into new primary legislation would improve matters at all.

It is difficult to avoid the conclusion on reading the paper that the real problem for its authors is not so much the interpretation of the Convention by the Strasbourg Court or indeed our own domestic courts but the frustration that an international legal obligation prevents the UK government from being able to ignore judgments when it considers that they are adverse to its view of what is in the public interest. How else can one interpret the suggestion that what are recognised as the "inalienable rights" under Article 3, should be capable of a little alienation in respect of deportation by substituting a new unspecified test for that of "a real risk", but one apparently nevertheless in line with what is

stated as “our commitment to prevent torture and in keeping with the approach taken by other developed nations”?

At present 47 of those developed nations accept the current interpretation of the Convention by the Strasbourg Court. Even the United States which does not, is fettered in its discretion to deport by the International Convention on the Prohibition of Torture, which is one of the reasons it has found it difficult to empty Guantanamo Bay. So either the change proposed will be in fact be of almost no effect, or if significant will undermine one of the key principles of the Convention.

Similarly with deportation, the paper indicates that a foreign national who “takes the life of another person” will be excluded from invoking Article 8 altogether so as to remain in this country. But what “taking a life” means is not specified. Does it cover just murder, or is it to include manslaughter and causing death by dangerous or even careless driving? Will it apply to minors? Will there be a sentence threshold because some of these offences sometimes properly attract non-custodial sentences? By seeking to micromanage the application of Convention rights in this way and provide no element of judicial discretion the intended policy risks causing injustice. I also note that the Home Office’s own statistics show only two murderers and five convicted of manslaughter have been successful on this basis from 2009 to 2013.

The same criticism has to be made of the intention that Parliament will determine a threshold below which Convention rights will not be engaged. Such an exercise is likely to prove as difficult to carry out as I suspect it will be fruitless. It will still have to be subject to judicial interpretation and will add to and not reduce litigation. The courts of our country have well tested processes for preventing abusive claims taking up time and cost.

### **Consequences**

At the start of this talk, I deliberately chose to look at the international dimension and benefits of the Convention before I turned to its impact here. We do not as a country operate in a vacuum in this matter. As I mentioned earlier, the Paper suggests that we should, after enacting our Bill of Rights and Responsibilities, seek the agreement of the other member states of the Council of Europe that the judgments of the Strasbourg court should thereafter be merely advisory for us, failing agreement on which we should leave the Convention. It must certainly be the case that our relationship with the Convention will be in question, as it is impossible to see that the proposed Bill of Rights can be compatible with it- entirely different from the position which my Party adopted in its manifesto when promoting a Bill of Rights in 2010.

Such a course may be strictly lawful, but its practical consequences are likely to be as devastating both for ourselves domestically as it will be for the future of the Convention.



Domestically, our non-compliance with the Convention calls into question the Devolution settlements for Wales, Scotland and Northern Ireland which enshrine Convention rights as governing all their actions. Parliament at Westminster could, of course, legislate to change the position, but there is evidence that this would be against the will of the devolved administrations. In the case of Northern Ireland, it is also part of the Good Friday Agreement, an international treaty. At a time when the future of the United Kingdom is still in question and the peace settlement in Northern Ireland still fragile, it opens the prospect of a new area of political discord quite apart from the possibility of our courts having to operate different rights systems in one country. For a Unionist party this seems a strange thing to do.

Furthermore adherence to the principles of the Convention is explicit in our membership of the EU. At present the ECJ in Luxembourg is confined to applying the Convention as enshrined in the Charter of Fundamental Rights only to matters within EU competence. But it has been notably expansive in this respect and it has properly been a goal of government policy to try to limit this trend. This was why I argued the case of Chester and MacGeoch myself in the Supreme Court when it was suggested that EU law could be invoked over Prisoner Voting rights. But I can think of nothing more likely to accelerate this trend than claims being brought before the ECJ by persons who consider that they are being denied access to Convention Rights and they can get no redress

either domestically or through the Strasbourg Court. The likely consequence will be that the ECJ will expand its jurisprudence to give redress and that the judgments against the United Kingdom will then have direct effect here.

But these constitutional consequences pale for me compared to the effect on the operation of the Convention itself.

As an international treaty, its success is dependent on the peer group pressure amongst its adherents to promote respect for it and help ensure its judgments get implemented. That is why it is inconceivable that we can negotiate a special status for ourselves within it and why our departure as one of its principal creators and supporters will be so damaging to it. It is already the case that countries such as Russia are using the UK position to try to procrastinate on implementing judgments. Indeed the effect of our conduct will go further as the UK's ambivalence is being cited by countries such as Venezuela in ignoring obligations under the American Convention on Human Rights arising prior to its denunciation of it in 2012 and citing Britain's approach as a justification and by the president of Kenya over the jurisdiction of the ICC. It bodes ill for all whose lives have been or could be beneficially affected by the existence of the Convention and the work of the Strasbourg Court and by Human rights conventions generally. It flies in the face of all the good work done internationally by the UK government to promote human rights for so long. I have to say that as a Conservative this pains me. Whatever the challenges the

Convention has posed and I accept that there are some proper grounds to criticise its operation, the failure of ambition represented in the Paper and the narrowness of its moral and political vision is very disappointing.

## **Conclusion**

But I have no intention of ending this talk on a gloomy note. The debate on which my Party is now embarked is one that I believe need not lead to our withdrawal from the Convention or such an adverse outcome for human rights or our national interest. This is not some prediction of mine as to the outcome of the election because I wish and trust that a Conservative government will be returned. It is because I note, with some pleasure, that the Paper is clearly based on the premise that the text of the Convention has now become so well implanted into national consciousness that it meets the Paul Johnson test and is therefore to be retained whatever the contradictions with the paper's other ambitions. It is also pleasant to note that the Paper clearly accepts that the increasing power of the modern state to intrude into people's lives requires a statute to protect the citizen. But, as importantly, I believe that those of us in the Party who see the maintenance and promotion of an international system of human rights as being in the national interest and entirely in keeping with a Conservative tradition of freedom under the law, will win that argument for the reasons I have given....but we must not stay silent.

Dominic Grieve



**UCL Judicial Institute**

UCL Faculty of Laws  
Bentham House  
London  
WC1H 0EG

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