

PROTECTING HUMAN RIGHTS IN THE UK

THE CONSERVATIVES' PROPOSALS FOR
CHANGING BRITAIN'S HUMAN RIGHTS LAWS

HUMAN RIGHTS IN CONTEXT

Britain has a long history of protecting human rights at home and standing up for those values abroad. From Magna Carta in 1215, to the Bill of Rights and the Claim of Right in 1689, and over the centuries through our Common Law tradition, the UK's protection of human rights has always been grounded in real circumstance, rather than simply being a matter of abstract principle.

The European Convention on Human Rights (ECHR) was signed in Rome in 1950, as part of the post-war efforts by the Allies to ensure that the horrors of the 1940s could never be repeated. It was agreed in the shadow of Nazism, at a time when Stalin was still in power in the Soviet Union and when people were still being sent to the gulags without trial.

It sets out certain absolute rights, which include the right not to be tortured, the right not to be enslaved and the right to a fair trial. The Convention also contains rights which can only be limited in the restricted circumstances it sets out, such as the right to life and the right to liberty. The substance of these rights lies at the very heart of the Convention's text.

In addition, the Convention contains a third category of 'qualified' rights, which can be restricted in a range of scenarios. For example, Article 8, the right to respect for private and family life, is qualified with the following: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Convention is an entirely sensible statement of the principles which should underpin any modern democratic nation. Indeed, the UK had a great influence on the drafting of the Convention, and was the first nation to ratify it.

In today's uncertain world, our commitment to fundamental human rights is as important as ever. That is why we must put Britain first, taking action to reform the human rights laws in the UK, so they are credible, just and command public support. We are today outlining our key objectives to do just that, and we will shortly publish a draft British Bill of Rights and Responsibilities for consultation, so we deliver a coherent and comprehensive human rights regime in Britain.

THE CASE FOR CHANGE

Over the past 20 years, there have been significant developments which have undermined public confidence in the human rights framework in the UK, and which make change necessary today.

The European Court of Human Rights (ECtHR) in Strasbourg has long been established as a means of enforcing the Convention's terms. It was not until 1998, however, that the binding jurisdiction of the Court, and the right of individuals to take a case to Strasbourg, became necessary for countries signed up to the Convention. These developments happened at the same time as the Labour Government in the UK brought forward the Human Rights Act (HRA). Both the recent practice of the Court and the domestic legislation passed by Labour has damaged the credibility of human rights at home.

- **The European Court of Human Rights has developed 'mission creep'.** Strasbourg adopts a principle of interpretation that regards the Convention as a 'living instrument'. Even allowing for necessary changes over the decades, the ECtHR has used its 'living instrument doctrine' to expand Convention rights into new areas, and certainly beyond what the framers of the Convention had in mind when they signed up to it. There is mounting concern at Strasbourg's attempts to overrule decisions of our democratically elected Parliament and overturn the UK courts' careful applications of Convention rights.

For instance:

- *The current dispute between the Court and the United Kingdom over voting rights for prisoners is one clear example. The issue of the franchise in elections was deliberately excluded from the text of the Convention. The Strasbourg Court has, however, now decided that it falls within the Convention's ambit.*
- *Another clear example of 'mission creep' came in a 2007 ruling by the Court that required the UK Government to allow many more prisoners the right to go through artificial insemination with their partners, in order to uphold their rights under Article 8. This is not what the originators of the Convention had in mind when they framed that article.*
- *There have also been cases involving foreign nationals who have committed very serious crimes in the United Kingdom, but who have been able to use the qualified rights in the Convention, as interpreted by the rulings of the ECtHR, to justify remaining in the UK. These judgments have apparently overlooked the very clear qualifications in the Convention relevant to the legitimate exercise of such rights.*
- *In 2013 the Strasbourg Court ruled that murderers cannot be sentenced to prison for life, as to do so was contrary to Article 3 of the Convention. This Article is designed to prohibit "torture" and "inhuman or degrading treatment or punishment." For the Strasbourg Court, this entails banning whole life sentences even for the gravest crimes.*

- **Labour’s Human Rights Act undermines the role of UK courts in deciding on human rights issues in this country.** Section 2 of the HRA requires UK courts to “take into account” rulings of the Strasbourg Court when they are interpreting Convention rights. This means problematic Strasbourg jurisprudence is often being applied in UK law. Strasbourg jurisprudence includes the doctrine of ‘proportionality’, and the application of this doctrine has led judges to question whether provisions of legislation and decisions of public authorities are ‘proportionate’ to their objectives, which can amount to an essentially political evaluation of different policy considerations. We also believe that in many areas the interpretation given to Convention rights has not struck the appropriate balance between individual rights and responsibilities to others.
- **Labour’s Human Rights Act undermines the sovereignty of Parliament, and democratic accountability to the public.** Although, the HRA affirms the sovereignty of the UK Parliament over human rights matters, Section 3(1) undermines Parliamentary sovereignty in practice. This provision requires UK courts to read and to give effect to legislation in a way which is compatible with Convention rights, “so far as it is possible to do so”. There are cases in which, due to this rule, UK courts have gone to artificial lengths to change the meaning of legislation so that it complies with their interpretation of Convention rights, most often following Strasbourg’s interpretation, even if this is inconsistent with Parliament’s intention when enacting the relevant legislation.

For instance:

- *The Misuse of Drugs Act makes it a criminal act to possess an illegal drug, but provides the defence for the defendant to prove, on the balance of probabilities, that they did not know, suspect or have reason to suspect that what they had was an illegal drug. However in 2001 the House of Lords ruled, under section 3(1) HRA that the Act must be read as only requiring the defendant to submit evidence supporting their claim that they did not know or suspect that what they had was an illegal drug, after which it fell to the prosecution to prove beyond reasonable doubt that they did not know or suspect this. This was done under Article 6 of the Convention, the right to a fair trial.*
- **Labour’s Human Rights Act goes far beyond the UK’s obligations under the Convention.** Whilst the Convention imposes on states the requirement to secure the rights and freedoms in the convention for its citizens, it does not mandate any particular legal mechanism for doing so. It does not require the direct incorporation given effect by the Human Rights Act, nor does it require the jurisprudence of the Strasbourg Court to be directly binding on domestic courts. The German Constitutional Court for example ruled that if there is a conflict between the German Basic Law and the ECHR, then the Basic Law prevails over the Convention. The Human Rights Act provides no such domestic protection in the UK.

THE CONSERVATIVES' PLAN FOR CHANGE

Protecting fundamental human rights is a hallmark of a democratic society, and it is central to the values of the Conservative Party. However, the present position under the European Court of Human Rights and the Human Rights Act is not acceptable. The next Conservative Government will make fundamental changes to the way human rights laws work in the United Kingdom, to restore common sense and put Britain first. Our reforms will mean that:

- **The European Court of Human Rights is no longer binding over the UK Supreme Court.**
- **The European Court of Human Rights is no longer able to order a change in UK law and becomes an advisory body only.**
- **There is a proper balance between rights and responsibilities in UK law.**

Our proposals are grounded in two basic legal facts.

- **There is no formal requirement for our Courts to treat the Strasbourg Court as creating legal precedent for the UK.** Such a requirement was introduced in the Human Rights Act, and it is for Parliament to decide whether or not it should continue. Many European countries, including Germany, do not place such a requirement on their national courts.
- **In all matters related to our international commitments, Parliament is sovereign.** This principle has been clearly established in judgements by the House of Lords and in public statements by Government law officers.

At the heart of our plan is a new British Bill of Rights and Responsibilities. It will ensure that Parliament is the ultimate source of legal authority, and that the Supreme Court is indeed supreme in the interpretation of the law. We will shortly be publishing a draft of this Bill, to begin a process of engagement and consultation on the best way to achieve our aims. This will ensure we deliver our reforms in a comprehensive and credible way.

The key objectives of our new Bill are:

- **Repeal Labour's Human Rights Act.**
- **Put the text of the original Human Rights Convention into primary legislation.** There is nothing wrong with that original document, which contains a sensible mix of checks and balances alongside the rights it sets out, and is a laudable statement of the principles for a modern democratic nation. We will not introduce new basic rights through this reform; our aim is restore common sense, and to tackle the misuse of the rights contained in the Convention.
- **Clarify the Convention rights, to reflect a proper balance between rights and responsibilities.** This will ensure that they are applied in accordance with the original intentions for the Convention and the mainstream understanding of these rights.

For instance:

- *We will set out a clearer test in how some of the inalienable rights apply to cases of deportation and other removal of persons from the United Kingdom. The ECtHR has ruled that if there is any ‘real risk’ (by no means even a likelihood) of a person being treated in a way contrary to these rights in the destination country, there is a bar on them being sent there, giving them in substance an absolute right to stay in the UK. Our new Bill will clarify what the test should be, in line with our commitment to prevent torture and in keeping with the approach taken by other developed nations.*
- *The Convention recognises that people have civic responsibilities, and allows some of its rights to be restricted to uphold the rights and interests of other people. Our new Bill will clarify these limitations on individual rights in certain circumstances. So for example a foreign national who takes the life of another person will not be able to use a defence based on Article 8 to prevent the state deporting them after they have served their sentence.*
- *Some terms used in the Convention rights would benefit from a more precise definition, such as ‘degrading treatment or punishment’, which has arguably been given an excessively broad meaning by the ECtHR in some rulings. For example in one case, the simple fact that an individual would have to live in a particular city in Somalia was deemed put him at real risk of degrading treatment.*
- *It will not necessarily be possible to clarify every potential application of Convention rights in the new law. Parliament will consider the Convention rights set out in the law in all the legislation it passes.*
- **Break the formal link between British courts and the European Court of Human Rights.** In future Britain’s courts will no longer be required to take into account rulings from the Court in Strasbourg. The UK Courts, not Strasbourg, will have the final say in interpreting Convention Rights, as clarified by Parliament.
- **End the ability of the European Court of Human Rights to force the UK to change the law.** Every judgement that UK law is incompatible with the Convention will be treated as advisory and we will introduce a new Parliamentary procedure to formally consider the judgement. It will only be binding in UK law if Parliament agrees that it should be enacted as such.
- **Prevent our laws from being effectively re-written through ‘interpretation’.** In future, the UK courts will interpret legislation based upon its normal meaning and the clear intention of Parliament, rather than having to stretch its meaning to comply with Strasbourg case-law.

- **Limit the use of human rights laws to the most serious cases.** The use of the new law will be limited to cases that involve criminal law and the liberty of an individual, the right to property and similar serious matters. There will be a threshold below which Convention rights will not be engaged, ensuring UK courts strike out trivial cases. We will work with the devolved administrations and legislatures as necessary to make sure there is an effective new settlement across the UK.
- **Limit the reach of human rights cases to the UK,** so that British Armed forces overseas are not subject to persistent human rights claims that undermine their ability to do their job and keep us safe.
- **We will amend the Ministerial Code to remove any ambiguity in the current rules** about the duty of Ministers to follow the will of Parliament in the UK.

THE INTERNATIONAL IMPLICATIONS FOR OUR PLAN

Our plan will restore public confidence in the Human Rights framework in this country. Nevertheless, we are aware that, under the terms of the current treaty it will remain open to individuals to take the UK to the Strasbourg Court claiming a breach of their Convention rights, and resultant judgments of the Court will be seen to be binding on the UK as a treaty obligation.

The UK stands by the commitments made when we signed the Convention, and it is only the subsequent approach of the Court and Labour's Human Rights Act that have eroded public confidence in our human rights framework. It would be wrong to renounce the Convention unilaterally when it is not our principled commitment to fundamental human rights that has changed. We would like the UK to remain a party to the Convention, as part of our membership of the Council of Europe. We hope, therefore, that the Council will recognise these changes to our Human Rights laws.

- **During the passage of the British Bill of Rights and Responsibilities, we will engage with the Council of Europe, and seek recognition that our approach is a legitimate way of applying the Convention.**
- **In the event that we are unable to reach that agreement, the UK would be left with no alternative but to withdraw from the European Convention on Human Rights,** at the point at which our Bill comes into effect. We would do so safe in the knowledge that the text of the Convention itself is enshrined in our own statutes, protecting human rights in line with the will of the British Parliament and the rulings of British Courts.

THE EU DIMENSION

In addition to, and separate from, the European Convention on Human Rights, the UK is a member of the European Union (EU). The EU Charter of Fundamental Rights was given force in EU Law by the Lisbon Treaty. The Charter contains a range of rights, drawing upon the ECHR. The Court of Justice of the European Union is responsible for the interpretation and application of the Charter, but its force is limited to matters within the scope of EU law.

The Lisbon Treaty also enabled the EU to sign up to the Convention in its own right. Negotiations are ongoing over the terms of the EU's accession to the ECHR, which will have to be agreed by all EU Member States and all ECHR countries. We are mindful that there may be legal implications for our approach once the EU accedes to the ECHR. We will therefore ensure this is reflected in the rules that will govern the EU's interaction with the Court. The EU's application to join the Convention requires the unanimous agreement of all member states, which will allow us to ensure that the UK's new human rights framework is respected.

Finally, the Conservatives are clear that our relationship with the EU will be renegotiated in the next parliament, and if there is anything in that relationship which encroaches upon our new human rights framework, then that is something it will be open for us to address as part of the renegotiation.

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Conservatives