

HUMAN RIGHTS ACT 1998 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Human Rights Act 1998 was created by an act of Parliament under the laws of the United Kingdom, and it got the Royal Assent the same year. The act, however, came into full enforcement in the year 2000; its aim is to support the UK legal system, especially the rights in the European Convention of Human Rights. The act provides UK Courts with solutions for any individual or company violating the human rights in the country, without the necessity of going to the European Court of Human Rights that is situated in Strasbourg.

According to the Act, any public body should follow the stated principles unless they are permitted by an Act of Parliament. Judges in UK courts are expected to stay up to date with cases heard in the Strasbourg court and interpretations of the legislation in a manner that is well-suited to the Convention. If judges are not able to make the Act compatible with the Convention, they cannot completely rule it out and they are only allowed to issue a declaration of incompatibility. A convention is widely considered as an international agreement normally made by sovereign states by accepting some set terms to bind them. The declaration, however, does not affect how the Act of Parliament in the UK legal system operates, and as a last resort, people are allowed to consult the Strasbourg court (Keenan and Riches 2007).

After World War II, the Council of Europe decided to draft a convention and the committee was chaired by Sir David Maxwell Fyfe. His main task was to oversee and ensure proper drafting of the European Convention on Human Rights. It had an aim of achieving political democracy in the United Kingdom by using a traditional approach, which was civil liberty. The UK is one of the founders of the Council of Europe. In March 1951, the country signed the European Convention on Human Rights. Citizens of the United Kingdom, however, could not submit their claims to the court until the 1960's when Harold Wilson formed the government. In the 1980's, it was believed that executives in the country misused the power in the European Court of Human Rights. This created a need for legislation that would protect the human rights in the country, hence the formation of the Human Rights Act 1998. Through this act, the European Convention on Human Rights was incorporated into the law (Betten 1999).

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The Act requires that all courts in the United Kingdom should understand the legislation in accordance with the rights stated in the European Convention on Human Rights. The declaration is not aimed at looking down on the legislation, but it provides an allowance for amendment in a quick and transparent manner. All public bodies within the United Kingdom are required to adhere to the Human Rights Act, with the exception of Parliament that can act in its legislative capacity. During the interpretation of the Act, courts are required to review both the primary and subordinate legislation so that they are in line with the European Convention on Human Rights. The latter is incorporated in the Human Rights Act 1998. Future and past legislation is included and this is achieved by the use of three major ways of interpretation. There is the 'reading in' that involves inclusion of words that did not exist in a statute; the 'reading out' in which some words that may lead to incompatibility are removed from a statute; and the 'reading down' in which the given meaning complies with the statute. Any statute interpreted should not conflict with a legislative intent; hence, courts have been hesitant in 'reading out' provisions. In case the court is unable to interpret, a declaration of incompatibility is issued as stated in Section 4 (Butler 2000).

In case the court is unable to use Section 3 in the interpretation process, whether subordinate or primary legislation, it is allowed to issue a declaration of incompatibility. This is done so that the provisions made are in synch with stipulations of the European Convention on Human Rights. The

provisions are also included in the United Kingdom's Human Rights Act 1998. The declaration of incompatibility is considered as a last resort and can only be given by several superior courts. It is not binding to any parties involved in the proceeding that leads to its making, and a declaration cannot nullify legislation. Section 4 of the Human Rights Act 1998 is carried out mainly through political means, as compared to legal means. The same case applies to Section 10 that gives power to the government to provide amendments in the legislation without a definite approval. A remedial order can be issued but only after a definite renouncing of all appeals in a European court or a declaration of incompatibility. Section 10 has been used by Parliament for small adjustments so as legislation can conform to the Convention rights (Butler 2000).

It is stated that the Act mainly focuses on public bodies, but it has also had a continued influence on the private law as well. Some citizens of the United Kingdom state that the Human Rights Act 1998 has an effect on the relationship between them and the private law (horizontal effect) and also between citizens and the state (vertical effect). I think this can be attributed to the fact that in Section 6 of the Human Rights Act, tribunals and courts are defined under public bodies. This means that the judgment that they give has to be in line with the human rights convention, except for cases when there is a declaration of incompatibility. As a result, judges have a responsibility to follow the European Convention on Human Rights, even when dealing with a private case involving two citizens (Betten 1999).

The Human Rights Act 1998 states that it is against the law for any given public authority to carry out its undertakings against the Convention on Human Rights. Hence, it is considered that any person who works in the public sector can be termed as belonging to the public authority, including courts. Section 1 of the Human Rights Act 1998 specifies rights that are included in the Convention on Human Rights, and the United Kingdom courts are allowed to consider the European Court of Human Rights' jurisprudence. If a claim is made against the public authority in regard to a violation of Convention rights, the Court has the power to grant a remedy. This is despite the fact that the Human Rights Act 1998 has some restrictions on power of the Court to make such decisions. In case primary legislation cannot be read in a manner submissive to the Convention, the Court's only sanction is to issue a declaration of incompatibility for it. Public authorities are, however, defended by the Act if their convention violating case can be viewed in regard to a mandatory obligation given by Westminster primary legislation. The power to issue it lies solely with higher courts, and the declaration causes public pressure, making the government get rid of the incompatibility. Ministers are allowed to take corrective action by the Human Rights Act 1998 to comply with the convention by amending the primary legislation, which is normally done through the subordinate legislation (Bates 2010).

The death penalty in the United Kingdom was abolished by the Human Rights Act, which had been effective in case of a loyal assent. However, the sentence was applied not to civil offences, but to military ones after passing the Act. Later, under the pressure of Parliament, the government through the European Convention amended the clause, prohibiting any death penalty (Butler 2000).

The Human Rights Act 1998 is part of the United Kingdom's law under the Act of Parliament, while the Convention is a legal tool by the Council of Europe. In itself, the Convention is not part of the United Kingdom's law, but the rights contained in it are effective in the country through the Human Rights Act. The application and interpretation of the Convention is carried out by the Court of Human Rights, and the Court's judgments cannot directly be termed as representing United Kingdom's stand. Nevertheless, judgments given by the Court and the Convention are important in perceiving the Human Rights Act. The Human Rights Act 1998 implemented the European Convention on Human Rights in the United Kingdom's legal system and made it a source of doctrines to be used in British courts when dealing with the Human Rights (Keenan and Riches 2007).