



The work of the UK Parliament's Joint Committee on Human Rights

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Following the coming into force of the Human Rights Act 1998 (HRA) in the UK in 2000, the UK Parliament appointed a joint committee of both Houses of Parliament to scrutinise the Government and the state of human rights in the UK (the JCHR). It consists of 12 members, with an equal number of members from each House. It is mixed politically, with five Labour, four Conservatives, two Liberal Democrats and one cross bencher and is currently chaired by a Labour member of the House of Commons, Andrew Dismore MP.¹

The Committee's terms of reference are: "to consider matters relating to human rights in the United Kingdom (excluding individual cases)". The Committee's broad terms of reference mean that it sets its own priorities. Its main strands of work are: legislative scrutiny of bills; inquiries into specific human rights problems (such as older people in healthcare, adults with learning disabilities, a Bill of Rights for the UK and currently, policing and protest); monitoring the implementation of the HRA and establishing a culture of rights; monitoring Government responses to key ECtHR and domestic judgments and scrutiny of compliance with international instruments. This article considers some of these areas of the Committee's work in more detail.

The JCHR and the HRA

The HRA strikes a compromise between a system of parliamentary sovereignty and a system of fundamental rights. The JCHR is a product of this compromise, and is central to how it operates. Under Section 3 HRA, courts are required to interpret legislation in accordance with Convention rights in so far as it is possible to do so. If this is not possible, a court may make a declaration of incompatibility under Section 4 HRA, but this does not affect the validity or continuing operation of the law. It is at the discretion of the Government to introduce corrective legislation or a remedial order, which must be passed by Parliament. Parliament therefore retains a much more crucial role in the protection of human rights.

The JCHR fits into the scheme of the HRA in two ways. Firstly, it scrutinises ministerial statements that Government Bills are compatible with ECHR rights and so informs debate on legislation in Parliament. Secondly, it scrutinises remedial orders which are designed to rectify an incompatibility found by the domestic courts or the ECtHR. The JCHR is required, under its standing orders, to report on whether a remedial order should be approved.

Legislative scrutiny

The Committee considers the human rights compatibility of every Government Bill before Parliament. It considers not only the risk of interference with ECHR rights, but also any risk of interference

with rights which the UK has signed up to internationally, such as under the UN Covenants (ICCPR and ICESCR) and the UN Conventions on the Rights of the Child, the Elimination of Racial Discrimination or Discrimination Against Women and Torture. It also considers whether a Bill misses an opportunity to improve human rights protection. It will only consider and report on a Bill which appears to it to raise significant human rights issues. Factors which it takes into account in making this assessment include:

- How important is the right affected?
- How serious is the interference?
- How strong is the justification?
- How many people are affected?
- How vulnerable are those people?
- To what extent are the State's most significant positive obligations affected?

Before reporting on a Bill that raises human rights concerns, the Committee will ordinarily write to the Government setting out these issues and seeking an explanation. It will also consider submissions made to it by interested organisations and individuals. In the current year, the Committee has also started proposing amendments to Bills to seek to alleviate some of the human rights problems which the Bills raise.

Monitoring implementation of judgments

The Committee of Ministers (CoM) of the Council of Europe (CoE) have principal

responsibility for the enforcement of judgments of the ECtHR. Both the CoM and the Parliamentary Assembly of the CoE (PACE) have repeatedly confirmed that the primary focus on the implementation of the Convention and the enforcement of judgments must be on the responsibility of states to take action domestically. This is particularly important in the light of the increasingly burdensome caseload of the ECtHR.

The CoM has repeatedly confirmed its view that in order to be considered effective, monitoring at an international level must be accompanied by close scrutiny at a national level. The JCHR considers it to be an important part of its work to scrutinise the implementation of any necessary general measures to avoid repeat, future ECHR violations. It undertakes this scrutiny through correspondence with Ministers, consideration of evidence from civil society and publication of regular progress reports on its work. Its next report is likely to be published in Autumn 2008.

In its report of 2006-7,² the Committee considered a number of themes as well as significant human rights judgments against the UK. Themes included the role of Parliament, the importance of national implementation and obstacles to effective

implementation of judgments such as delay, non-retrospective application of the HRA, re-opening proceedings and systemic obstacles. It also made a number of recommendations for better implementation in the future, including for a coordinating role for the Ministry of Justice and a proposed timetable for Government action on human rights judgments. The Government's response to these recommendations is still awaited.

The Committee will continue to monitor the Government's responses to the implementation of both judgments of the ECtHR and declarations of incompatibility with Convention rights made by the domestic courts. On the one hand, some cases are resolved with relative speed and with the minimum of confusion, through the use of the remedial order process. For example, the Committee praised the Government response to the judgment in *B & L v United Kingdom* (No. 36536/02 13/9/05). In that case, the applicants successfully challenged domestic law which prevented a father-in-law and his former daughter-in-law from marrying. The breach was removed with relative speed once the ECtHR had given its judgment.

This is not the case for all judgments. The Committee has recently welcomed the Government's decision to remove

the breach of Art. 8 ECHR identified in *Connors v UK* (No. 66746/01 27/5/04), by extending the Mobile Homes Act 1983 to Gypsy and Traveller Sites, granting the residents on those sites security of tenure. The Committee expressed disappointment that the Government did not bring forward this solution, suggested by the Committee in 2004, sooner.

In *Hirst v UK* (No. 74025/01 GC 6/10/05), the Grand Chamber held that the current blanket ban on prisoners participating in elections in the UK is in breach of the ECHR. It has now been over four years since the original Chamber decision and there appears to be no clear timetable for reform.³ It is perhaps in the more politically difficult cases where the Committee will continue to play a valuable role: increasing transparency and monitoring the Government's responses to the CoM.

¹ The terms of reference of the JCHR and more information about its work are available online: http://www.parliament.uk/parliamentary_committees/jchr.

² Joint Committee on Human Rights. 2007. *Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights: Sixteenth Report of Session 2006-07*. London: The Stationary Office Limited.

³ *Ibid.* Each of these cases is commented on in the Committee's last Report.