Calderdale Green Party

The European Convention on Human Rights and the UK Bill of Rights: a briefing paper

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1 The European Convention on Human Rights

1.1. The *Convention for the Protection of Human Rights and Fundamental Freedoms* was drawn up by the Council of Europe (2010) and came into force on 3 September 1953.

1.2. The Council of Europe had been founded by Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom on 5 May 1949 by the Treaty of London with the aim of achieving 'a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress' (Council of Europe, 1949, Acticle 1 a).

1.3. The convention was inspired in part by the *Universal Declaration of Human Rights* and was intended to prevent a recurrence of the sorts of abuses that had taken place in Nazi Germany (and might in some peoples' eyes take place in communist eastern Europe).

1.4. The convention sets out eighteen fundamental rights and the ways in which these are to be enforced, in particular by the European Court of Human Rights; to these eighteen fundamental rights, thirteen protocols have been added from time to time, six of which remain in force.

1.5. Article 34 provides that:

> The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

1.6. Many participating states have incorporated the convention into their own law, thus obviating the need for individuals to make applications directly to the Court; however, until the 1998 Human Rights Act, the United Kingdom had not done this and so applicants from the UK had to apply to the Court if they believed that their rights had been infringed in the UK.

2 UK Bill of Rights

2.1. In March 2011 the Coalition Government established the Commission on a Bill of Rights:

> "To investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extends our liberties.
>
> "To examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.
>
> "To provide advice to the Government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe.
>
> "To consult, including with the public, judiciary and devolved administrations and legislatures, and aim to report no later than by the end of 2012."

2.2. The public consultation only addressed one question:

> (1) do you think we need a UK Bill of Rights?

but respondents were also asked:

> (4) having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

2.3. In July 2012 the Commission circulated a second consultation, together with a covering letter from the Chair of the Commission, Sir Leigh Lewis KCB, which revealed that

a) over 900 individuals and organisations had responded to the consultation (para. 3);

b) of the respondents to [the] first consultation paper approximately a quarter advocated a UK Bill of Rights; just under half opposed such a Bill; with the remainder being neither clearly for nor against such a Bill (para. 10);

c) a section of those who were against a Bill of Rights opposed it because they considered that a UK Bill of Rights would be "HRA (Human Rights Act) minus", whilst a proportion of those supporting such a Bill did so because they envisaged it as building on the Human Rights Act by the inclusion of additional rights (para. 11).

2.4. The questions in this second consultation focused on whether:

a) the Human Rights Act should be retained or repealed,

b) the ECHR should be incorporated into domestic law,

c) a Bill of Rights should sit alongside the Human Rights Act,

d) a Bill of Rights might usefully have different language from the ECHR,

e) a Bill of Rights might contain additional rights

along with a number of matters relating to the framing of a Bill and its implications for Scotland and Northern Ireland.

3 The future of the Human Rights Act

3.1. In their manifesto for the 2015 General Election, the Tories promised to scrap the 1998 Human Rights Act.

3.2. At the Tory Party Conference in October 2015 the Tories pledged to replace the 1998 Human Rights Act with a UK Bill of Rights.

3.3. The arguments against this fall mainly into four groups:

a) the human rights traditions;

b) the legal frameworks of the constituent countries of the UK;

c) the practical issues for the government;

d) the practical issues for citizens.

3.4. The human rights traditions in the UK:

a) the ECHR largely reflects the traditions of the different countries of the UK; for example, in England and Wales, the *Magna Carta* and the common law have been important contributions to the development of human rights;

b) UK law since 1953 has both developed independently of the ECHR and reflected more closely the rights expressed within the ECHR, for example, in relation to discrimination.

3.5. The legal frameworks of the constituent countries of the UK:

- the 1998 Scotland Act requires the Scottish Government and the Scottish Parliament to act compatibly with the ECHR;
- the 1998 Northern Ireland Act requires Ministers, the Northern Ireland departments and the Northern Ireland Assembly to act compatibly with the ECHR;
- the 2006 Government of Wales Act requires Welsh Ministers and the Welsh Assembly to act compatibly with the ECHR.

A UK or England Bill of Rights would further fragment the four jurisdictions; the UK Parliament and Ministers should be under the same obligation to act compatibly with the ECHR as are the Ministers of other jurisdictions if we are to have a genuinely 'United Kingdom.'

3.6. Practical issues for the government:

a) unless the UK left the Council of Europe, a Bill of Rights would return the UK to the pre-1998 position in relation to the European Court of Human Rights;

b) should the UK choose to leave the Council of Europe, international cooperation with countries whose constitutions incorporate the ECHR could be reduced as suspects arrested abroad could argue that they should not be extradited to a country which did not respect the ECHR and businesses could still find themselves constrained to work within the ECHR in those countries much as American companies are required to respect European data protection law when operating in Europe.

3.7. The practical issues for citizens:

a) unless the UK left the Council of Europe, repealing the 1998 Human Rights Act would mean that all stages in the process of seeking redress would be in the hands of ECHR judges rather than only the ultimate stage as at present;

b) the timescale for redress would be significantly lengthened as it would no longer be possible to obtain a UK judgement which might shorten the process.

3.8. Rather than tinkering with existing legislation, it would be better if the government enforced existing rights; for example,

a) *Magna Carta* rights have been systematically eroded (Waite, 2011);

b) the presumption of innocence has been significantly reversed (Sanders and Young, 2007)

c) PACE rules are frequently broken (Sanders and Young, 2007);

d) suspects are often dissuaded by the police from exercising their rights (Sanders and Young, 2007);

e) there is no mechanism to ensure that CPS decision making is adequate (HM Crown Prosecution Service Inspectorate, 2005, 2.4);

f) the Home Office repeatedly failed in the past to ensure that basic human rights were upheld within prisons (Ramsbotham, 2003) and there is no evidence that the Ministry of Justice has remedied this situation;

g) legal aid and support for the Criminal Cases Review Commission have been cut significantly making it more difficult to obtain justice;

h) a completely new 'secret' administrative justice system has been introduced for those on benefits in which there is no presumption of innocence or right to legal advice and decisions are made by people with no legal training whatsoever.

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