

The human rights act 1998

[Sociology](#), [Human Rights](#)



Abstract

This essay will outline the main attributes of the Human Rights Act 1998 and seek to argue that it does not go far enough to protect an individual's rights. It will explain the difference between the procedural and substantive protection on offer to an individual and will show that whilst on a procedural level the rights appear to be protected, this is in fact not the case. The diversity of academic commentary on this topic will be explained to further enhance the essay's argument that more is required in order to adequately protect an individual's rights.

Introduction

The majority of the Human Rights Act 1998 (HRA) came into force in the UK on 2 October 2000 and enabled individuals to rely upon their European Convention on Human Rights (ECHR) rights in the domestic courts. There is a clear divide amongst the academics as to whether the Act has gone far enough to protect the rights of individuals in the UK. Whilst there is no denying that the HRA has afforded British residents the opportunity to use their rights in the courts, whether this amounts to a true protection of their rights will now be debated.

The Human Rights Act 1998

One of the main attractions of the HRA is that it allows individuals to pursue remedies against public organisations/bodies in the domestic courts as opposed to going to Strasbourg (Section 6, HRA). Before the HRA, if an individual alleged that one of their Convention rights had been breached,

then the only course of action available to them was to go to the European Court of Human Rights in Strasbourg. The HRA makes it illegal for any public body or organisation to breach an individual's Convention rights (Section 6, HRA). Additionally, judges are now required to consider "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." (Section 3(1), HRA). If this is not possible, then judges are under a duty to issue a declaration of incompatibility (Sections 4 and 10, HRA). It is important to note the limitation of their powers and they are no power to strike down the primary legislation, despite its incompatibility. One of the reasons for this is constitutionally, which is to maintain Parliament's sovereign nature. This is one of the key criticisms facing the HRA as arguably it affords little protection to individuals whose rights are being violated due to a piece of legislation being incompatible with their ECHR rights.

However, the statistics show that out of 28 cases where a declaration of incompatibility was issued, only case remains open for remedy (Ministry of Justice, 2012). This one exception is the controversial case of *Chester v Secretary of State for Justice* [2010] EWCA Civ 1439 which involves the right of prisoners to vote in elections. It has become something of a political football, but arguably the statistic alone shows that Parliament has taken the issue of incompatibility seriously as remedies have been provided in the other 27 cases. The other remedy available is the award of damages under section 8(1) of HRA.

Rights Protected by HRA

One of the over-arching principles of the HRA is that public bodies treat individuals equally and with respect. The Act allows the rights under the ECHR to be given effect into UK law and ensures individuals enjoy rights such as right to life (Article 2), the right not to be tortured (Article 3) and the right to a private and family life (Article 8). However, these rights have been used in various areas of law by lawyers such as planning applications (*Coster v UK* [2001] 33 EHRR 20).

Whilst this appears to be positive protection of individual rights, there are numerous examples of breaches of the Convention rights since the introduction of the HRA. One such instance is the right to privacy being curtailed through the Regulation of Investigatory Powers Act 2000 which has permitted government at the local level to carry out covert surveillance. Although on the other side of the argument, it can be shown that the introduction of HRA has allowed individuals to successfully pursue claims of invasion of privacy, not permitted before the HRA. These include Max Mosley and Naomi Campbell (*Max Mosley v News Group Newspapers Limited* [2008] EWHCC 177 and *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22).

Academic Commentary

Academics are divided in their opinions regarding the effect of the HRA on the protection of individual rights. On the one hand, some academics perceive the introduction of the HRA to be a positive development in human rights in creating an expectation of privacy (Fenwick, 2013), whilst others would disagree with this contention and point to other areas of law where rights are being violated. One such example is Article 6 right to a fair trial,

where Hoyano argues that the increased use of hearsay and bad character evidence are ensuring that individuals struggle to obtain fair trials in the UK (Hoyano, 2014). Furthermore, it has been suggested that, "The Act is widely blamed for administrative and judicial decisions that have been caricatured as privileging the rights of criminals and terrorists." (Wadham, et al., 2011, p 14). Overall, the Act has been controversial and reforms are most likely in the future.

Conclusion

To conclude, the HRA requires all courts and tribunals in the UK to interpret legislation in accordance with the Convention rights which primarily ensures a borderline protection of rights on a procedural level. Furthermore, section 6(1) of HRA makes it unlawful for a public body to act in a way to contravene Convention rights and therefore all public duties are now under a duty to act in accordance with an individual's Convention rights. However, a declaration of incompatibility can be sought and such a remedy is a first in the UK.

Individuals still have the right to pursue their claim in Strasbourg and the European Court of Human Rights remains the final point of appeal in allegations of breach of human rights. In this respect, it can be argued that an individual's rights are protected in a procedural sense as they can now pursue remedies in the domestic courts which is a far easier and cheaper solution. However, on a substantive level, there are criticisms that the Act does not far enough and instead human rights are curtailed. The presence of such violations ensure that the Act does not adequately protect rights, although arguably it is a significant step in the right direction.

Bibliography

Articles

Fenwick, D & Fenwick, H 2013 ' The Changing face of protection for individual privacy against the press: Leveson, the Royal Charter and tort liability,' *International Review of Law, Computers &Technology*, vol 27, no 3, 1 November 2013, pp. 241-279.

Hoyano, L. 2014 ' What is balanced on the scales of justiceIn search of the essence of the right to a fair trial' *Criminal Law Review* vol 1, pp. 4-29.

Books

Wadham, J., Mountfield, H., Prochaska, E., Brown, C., 2011. *Blackstone's Guide to the Human Rights Act 1998*. 6th ed. Oxford: OUP

Cases

Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22

Coster v UK [2001] 33 EHRR 20

Chester v Secretary of State for Justice [2010] EWCA Civ 1439

Max Mosley v News Group Newspapers Limited [2008] EWHCC 177

Legislation

Human Rights Act 1998

Regulation of Investigatory Powers Act 2000

Reports

Ministry of Justice, 2012. Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government response to human rights judgments 2011-12 [pdf] London: Ministry of Justice. Available at [https://www.gov.](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217308/responding-human-rights-judgments.pdf)

[uk/government/uploads/system/uploads/attachment_data/file/217308/responding-human-rights-judgments.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217308/responding-human-rights-judgments.pdf) [Accessed 3 February 2014]