

The department of education law constitutional administrative essay

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The Council of Europe was set up in 1949 after World War two. It is Europe's oldest political organisation. The council consists of forty seven countries, only two members of the EU Belarus and Kosovo are not members but Belarus has applied. The council's headquarters is in Strasbourg France.

[1]The main aim of the Council is " to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law".[2]The three main values of the Council are human rights whereby every person has a set of rights that cannot be taken away. Democracy where all the citizens of a country have a say in how it is run and finally the rule of law where no-one is above the law and everyone will be treated equally before it.

Cooperation between the members is also very important, " Co-operation between all member states is the only way to solve the major problems facing society today".[3]The Council of Europe has six main functions; firstly it passes EU laws which consist of regulations, directives and decisions which take priority of national law. Secondly the member states work together collaborating economic policies, they set similar targets and make uses of each other's knowledge. Thirdly on behalf of the European Union the Council signs agreements, they also decide on the yearly European budget with the EU Parliament. It also has a defense policy whereby if a natural disaster or conflict takes place resources and man power can be sent to the area as quickly as possible. Finally citizens of a country in the EU have access to justice in whatever member state they are currently in. The Council insures any decision made is recognized in all member states.[4]

The Council comprises of ministers from each member state, depending on the subject of the discussion an expert in that area will be sent, for example if education was the topic the UK would most likely send someone from the Department of Education.[5]

Human rights are " freedoms established by custom or international agreement that impose standards of conduct on all nations." [6] The principle of human rights has developed over time but it wasn't until the close of World War Two that they came into the public's attention. The United Nations realised that it was necessary to create safeguards to ensure that the future would not see a repeat of the atrocities that had taken place. In 1948 the declaration of human rights was published, it contained all the rights and freedoms that all people have equal access to. [7] The Human Rights Act 1998 came into play in the United Kingdom in October 2000. It made it illegal for a public body to not follow sixteen key rights set out in the European Convention of Human Rights unless an act of Parliament makes an exception. [8] Essentially the act " codifies the protections in the European Convention on Human Rights into UK law". [9] One effect this has had is that human rights cases can take place in a UK court not the European Court of Human Rights. Some examples of articles included in the Act are the right to life, a right that is protected by law. A right to a fair trial free of bias, a right to freedom in society from restrictions set in place by governing authorities. Finally the right to freedom of thought where you can think what you want and not be punished for it. [10] The European Convention on Human Rights was " an international agreement set up by the Council of Europe in 1950 to protect human rights. Under the Convention were established the European

Commission for Human Rights and the European Court of Human Rights".

[11]As mentioned above the ECHR was signed in 1950 by the Council of Europe, it is directly linked with the European Union due to following the terms set out in the convention are a term of EU membership.[12]The United Kingdom was one of the original members and had a big say in the composition of the Convention, it was also one of the earliest members to give its stamp of approval. In recent years the convention has begun to take hold more in the UK. This is believed to be taking place due to the political pressure on the government to put in place a written constitution for which the Convention has been argued to be suitable.[13]Some people believe that it is in the United Kingdom's benefit to immediately withdraw from the convention and there are many suggested reasons as to why. Firstly the Convention was created in the aftermath of World War Two when countries needed to work together and help each other to ensure their growth. Granted you cannot deny the important of the ECHR in the past but what reason is there for the UK's continued membership to this day? If the UK was to sever ties with the ECHR it is believed this could give off the wrong impression and how would the government explain their decision?[14]It is said that the Convention "degrades our democracy without enhancing our liberty[15]". A key principle of the UK's constitution is that of Parliamentary Sovereignty whereby Parliamentary is the key legal body in the UK which has the power to make new laws and end laws, no court can overthrow its decisions.[16]By being a member of the European Union and the convention on human rights we as a country are bound by the statutes it passes and the decisions it makes which are seen as supreme by the statutes / decisions

made in the UK and take precedence. Because of this Parliamentary Sovereignty has been diminished although the Convention should not take all the blame when other factors like devolution play a part. Recently Abu Qatada the radical Islamic Preacher was set to be deported to Jordan to face terrorism charges. The Court of Human Rights did not let this go ahead saying justice would be denied. Qatada who has been called Osama's right hand man was successful with his appeal with the court stating due to the lack of assurance from Jordan that Qatada would not be tortured, deporting him to Jordan would cause justice to be denied.[17]A topic that has been the cause of much deliberation in the UK is that of prisoners voting rights. Currently prisoners cannot vote unless they are on remand, this is where a defendant is held in custody whilst their trial takes place. The Court of Human rights has decided that not allowing prisoners to vote is a breach of their human rights. Lord Patrick a member of the House of Lords wrote " The UK signed up to the convention. It agreed to comply with the judgments of the European court. Not just those with which we agree but all of them,"[18]New legislation passed by the Court gives three possible options, firstly to allow prisoners with a sentence of up to 6 months the ability to vote, secondly to allow prisoners with up to 4 year sentences the right to vote or finally going against the court's decision and continuing to withhold prisoners right to vote. David Cameron said that changes should not even be considered and members of Parliament have called for the UK to withdraw from the ECHR.[19]The Convention was intended to serve as a form of protection against the atrocities that took place during the war. In the years immediately after the war it achieved its purpose but now times have

changed, what is its purpose today? The convention is an example of how people worldwide can work together to give people a better quality of life by offering them their "human rights". In conclusion the convention was created to protect people's human rights; it also created the Court of Human Rights and the Commission for Human Rights. The convention was set out primarily to stop the potential of the atrocities that took place during the way ever happening again. Over time it has adapted into the system we have now. So should Britain withdraw from the convention, from looking at a lot of evidence for both sides of the argument I believe they should. The convention goes against key principles of our constitution; it takes power away from our government who know our system and society and gives it to people who have less knowledge of our legal system. Word count: 1635