

Summary - House of Lords EU Justice Sub-Committee



Inquiry: Potential Impact on EU Law of Repealing the Human Rights Act

Evidence session No. 1: Professor Steve Peers (University of Essex), Professor Sionaidh Douglas-Scott (Queen Mary University of London) and Dr Tobias Lock (University of Edinburgh).

Summary: In this session, the committee took evidence from academics with expertise in EU and human rights law. The committee asked the witnesses a range of questions regarding the Human Rights Act (HRA) and the UK Government's proposal to repeal this, as well as the legal implications this would have for UK and European law. The implications of human rights reform on the UK's relations with the rest of Europe were also debated. In conclusion, the witnesses agreed with the outlook that repealing the Human Rights Act and replacing it with a British Bill of Rights "is a very complicated route to go down and one that is fraught with difficulty."

Attention was drawn to UK Common Law and the gaps that would emerge if the HRA were to be repealed. Professor Douglas-Scott implored the committee to "remember that one of the reasons why it was felt important for Britain to incorporate the European Convention in the HRA was that the common law was not doing an adequate job", emphasising that "the common law does not cover the spectrum of rights in the ECHR." Specifically, Professor Peers highlighted asylum as one area in which there would be a "gap" in human rights protection, should the HRA be repealed.

On the subject of whether repealing the HRA would necessarily lead to a UK withdrawal from the ECHR, however, Professor Douglas-Scott declared that repealing the HRA and not having a Bill of Rights could be "perfectly compatible." Professor Peers developed on this notion, stating that "it might mean more cases that are unresolved in British courts and more losses in Strasbourg, but that is no reason as such why that should lead us to leave the ECHR."

On the basis of a Conservative Party Policy Document published in October 2014 – in which the prospect of voluntary withdrawal from the ECHR was presented – the witnesses were then questioned on their opinions of implications for UK membership of the EU in this eventuality. Professor Peers addressed the technical side of the issue, stating that "there is no formal requirement" for members to be party to the ECHR, and that he "cannot imagine the scenario in which we [the UK] would somehow be required to leave [the EU] because we had not ratified the ECHR." However, he did maintain that ECHR withdrawal would cause "enormous difficulties in practice and immense friction, so it may de facto lead to or exacerbate a process of leaving the EU, even if there is no explicit legal requirement to do so."

Dr Lock also emphasised the problems that the UK may encounter in legal practice, particularly in relation to other EU member states and the concept of mutual recognition. In this respect, Professor Peers and Dr Lock demonstrated that cases may occur in which other member states would refuse to co-operate with the UK. "That would certainly be detrimental to the UK's membership of the EU", Dr Lock concluded, "it could even make it untenable."

Source: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/potential-impact-of-repealing-the-human-rights-act-on-eu-law/oral/23285.html>