Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2505 (2023)[1]

Reform of the UK's human rights legislation: consequences for domestic and European human rights protection

Parliamentary Assembly

1. The Parliamentary Assembly recalls that the aim of the Council of Europe is to achieve greater unity between its member States, based on the common values of respect for the rule of law, democracy and human rights.

2. The Assembly reaffirms its commitment to these values, which are the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy.

3. The Assembly emphasises that respect for the rule of law includes respect by States for their international legal obligations, including those under the European Convention on Human Rights (ETS No. 5, the Convention).

4. The Assembly recalls that, in line with the principle of subsidiarity, Council of Europe member States are primarily responsible for the effective implementation and enforcement of the international human rights norms they have signed up to, in particular those of the European Convention on Human Rights.

5. The Assembly recalls the importance of mainstreaming human rights education and ensuring improved public understanding of the inherent value of core principles such as the rule of law, robust democratic institutions and effective guarantees for the protection of human rights.

6. The Assembly considers that the United Kingdom (UK) system for giving effect to the European Convention on Human rights through the operation of the Human Rights Act is, in many respects, an excellent example of an effective domestic mechanism for ensuring that Convention rights are respected and fully implemented at the national level. This system also ensures respect for the separation of powers and for democratic debate in determining how laws and rights should be developed and balanced. The Assembly commends many of the features of the Human Rights Act as good examples for member States looking to successfully embed human rights, and in particular the Convention rights, in their national legal systems. The Assembly therefore considers that it would be regrettable if the United Kingdom were to dispense with such an excellent system that has led to the UK having one of the lowest number of cases brought before the European Court of Human Rights and, in particular, of findings of violations against it, of any State Party to the Convention.

7. Recalling its Resolution 1823 (2011) "National parliaments: guarantors of human rights in Europe", the Assembly is pleased that there are processes in place in the UK to consider the consequences for human rights and the rule of law of draft legislation before the UK Parliament, but considers that further thought might be given to ensuring that such processes and analysis benefit from sufficient independence, transparency and due consideration in the legislative process.

1. *Assembly debate* on 21 June 2023 (17th sitting) (see Doc. 15782, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Kamal Jafarov). *Text adopted by the Assembly* on 21 June 2023 (17th sitting).

8. The Assembly is concerned that recent legislation introduced by the UK Government to Parliament, and in particular the Bill of Rights Bill and the Illegal Migration Bill, indicates an increased willingness on the part of the UK Government, and certain legislators, to legislate in a way that could risk breaching the UK's international legal obligations and thus the rule of law. The Assembly is extremely concerned at such developments, and in particular what signal that may send, both domestically and internationally.

9. The Assembly, moreover, expresses concern that both the Bill of Rights Bill and the Illegal Migration Bill would increase legal uncertainty and conflicts between UK domestic law and the requirements of the European Convention on Human Rights – as well as a number of other international conventions. The Assembly notes that these concerns have been similarly expressed by numerous civil society organisations, the Joint Committee on Human Rights of the UK Parliament, the UK's national human rights institutions, the Commissioner for Human Rights of the Council of Europe, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the United Nations High Commissioner for Refugees.

10. The Assembly therefore calls on the UK Government and Parliament to:

10.1. ensure that robust processes are in place to ensure respect for the rule of law and, in particular, respect for the UK's international legal obligations in legislation proposed to Parliament. In particular, assessments of compatibility with the rule of law, including international law and human rights law, should be undertaken in respect of bills introduced into Parliament. Such assessments should be undertaken by a body that is sufficiently independent from the government to be able to provide objective advice on the rule of law, be available early in the legislative process and be made public to fully inform Parliament and the public, so that the legislature can take an informed decision on the implications of draft legislation before it. Parliament must be allowed adequate time and information to assess the rule of law and human rights implications of the legislation before it;

10.2. carefully consider the content of the provisions that, were they to enter into force, could risk placing the UK in breach of its international obligations, including the provisions relating to:

10.2.1. positive obligations (clause 5 of the Bill of Rights Bill);

10.2.2. overseas military operations (clause 14 of the Bill of Rights Bill);

10.2.3. interim measures (clause 24 of the Bill of Rights Bill and clause 53 of the Illegal Migration Bill);

10.2.4. restrictions on the protections for victims of modern slavery and human trafficking under the Illegal Migration Bill;

10.2.5. the adequacy of safeguards against indefinite or arbitrary detention of migrants under the Illegal Migration Bill;

10.2.6. protections for children under the Illegal Migration Bill, including as concerns detention, removal and standards of care for children, including unaccompanied children;

10.2.7. protections for refugees and stateless persons under the Illegal Migration Bill;

10.2.8. the adequacy of due process, appeal rights and the availability of an effective remedy for individuals affected by decisions taken under the Illegal Migration Bill.

11. The Assembly calls on all member States of the Council of Europe to:

11.1. ensure that the European Convention on Human Rights is fully embedded, applied and enforced in their domestic legal systems and to take adequate steps to support a culture of respect for human rights and the rule of law domestically;

11.2. put in place adequate mechanisms to ensure that the human rights and rule of law implications of draft legislation are fully and transparently assessed before legislation is passed, by systematically verifying the compatibility of draft legislation with Convention standards;

11.3. ensure that adequate processes are in place to correct misunderstandings or misinformation relating to the rule of law and the impact of the European Convention on Human Rights system; and make use of available information on the functioning of the European Convention on Human Rights system;

11.4. develop initiatives for education and training on human rights and the rule of law in order to foster a culture which understands and respects the important role that the rule of law and human rights play in a healthy democracy.

12. The Assembly calls on members States and the instances of the Council of Europe to develop improved tools in order to counteract misinformation in relation to human rights and the rule of law more effectively. In this light, the Assembly welcomes initiatives such as the work to highlight the impact of the European Convention on Human Rights system and encourages greater use of such communication materials. The Assembly also encourages further reflection on how best to strengthen communication work in relation to the role of the European Court of Human Rights and the implementation of its judgments.