



The importance of the UK's membership of the European Convention on Human Rights

Briefing for MPs and Peers – October 2023

Introduction

JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

JUSTICE is increasingly concerned by calls for the UK to withdraw from the European Convention on Human Rights ('ECHR'). This briefing sets out the importance of the UK remaining a signatory to the ECHR and continuing as a leading member of the Council of Europe. **We urge all those who support the ECHR and the UK's leadership in the Council of Europe to make their voices heard in this current debate, and to ensure the reputational and practical importance of continued membership is more widely recognised.**

The UK's leading role in the Council of Europe

British lawyers played a significant role in drafting the ECHR in response to the horrors of the Second World War. Jesse Norman MP has [set out](#) how the ECHR was '*framed by British jurists, working within a common law legal tradition*' and was '*scrupulously drafted*'. **Winston Churchill was a passionate advocate, [stating in 1948](#) that '*in the centre of our movement stands a charter of human rights, guarded by freedom and sustained by law*'.**

The UK was the first country to sign up to the ECHR on 4 November 1950. The Council of Europe ('CoE') is responsible for enforcing the ECHR and has significantly strengthened human rights across Europe. [For example](#), none of its member states have sentenced an individual to the death penalty since 1997.

The [UK Government's position](#) is that '*we increase the effectiveness of the Council of Europe (CoE) and the UK's influence within it to make the CoE better able to protect the UK's goals in Europe on improving human rights, democracy and respect for the rule of law*'.

Only two countries have ever left the ECHR and the Council of Europe: [Russia](#) following its invasion of Ukraine and [Greece](#) when it was a military dictatorship. Russia, Belarus and the Vatican City are the [only countries](#) on the European continent not signed up to the ECHR. Withdrawing from the ECHR would be a huge diminishment of our international reputation and influence in Europe at a critical time, with the war in Ukraine continuing.

Examples of the UK's influence within the CoE and the body's importance include:

- The UK Government [praised](#) the CoE's '*swift and decisive action in responding to Russia's aggression*' in Ukraine. The CoE's [Action Plan for Ukraine](#) includes providing legal advice to Ukrainian prosecutors, supporting the human rights of Ukrainian military personnel and promoting the rights of children in the conflict.
- In 2023, the head of the UK's delegation to the Organisation for the Security and Co-operation in Europe ('OSCE') [highlighted](#) how the CoE and OSCE '*share much common-ground – joint work on serious organised crime, counter-terrorism, human trafficking and gender*'.
- Alicia Kearns MP, Conservative chair of the Foreign Affairs Select Committee, [cited](#) a recent ECtHR judgment on the Bosnian voting system as a '*landmark judgment*' which will '*hopefully provide the impetus for meaningful democratic change*';
- In 2012, the UK negotiated the [Brighton Declaration](#) which stressed the importance of giving individual member states a '*margin of appreciation*' in determining human rights claims in their own national context.

Withdrawal would jeopardise Good Friday Agreement and security cooperation

As well as surrendering the UK's leading role in shaping the interpretation of the ECHR and hurting our international reputation, we would highlight the following domestic consequences of withdrawal from the ECHR:

- **Endangering The Good Friday Agreement.** The Good Friday Agreement [commits](#) the UK to '*completing incorporation*' of the ECHR into Northern Irish law including '*direct access to the courts, and remedies for breach of the [ECHR]*'. Full incorporation of the [ECHR requires](#) an individual to be able to petition the European Court of Human Rights ('ECtHR') and for rights to be provided for '*everyone in their jurisdiction*'. **The UK is unlikely to be able to withdraw from the ECHR in a way that is compatible with the Good Friday Agreement.**
- **Destabilising devolution.** Compliance with the ECHR is hard-wired into the [devolved legal settlements](#) and the present Scottish and Welsh devolved governments [are supportive](#) of ECHR membership.
- **Harming UK security.** The UK-EU Trade and Cooperation Agreement allows the EU to unilaterally terminate international law enforcement and judicial cooperation in criminal justice matters if the UK withdraws from the ECHR. This would include halting the [sharing of DNA and fingerprint data](#) with the UK.
- **Worsening UK-EU relations.** Withdrawing from the ECHR would threaten the [Windsor Framework](#) which was agreed on the basis of the UK's '*full commitment...to protecting the Good Friday or Belfast Agreement*'. On announcing the Windsor Framework, the Prime Minister [committed in Parliament](#) that the UK would '*remain a member of the ECHR*'. Withdrawing would risk corroding the UK's relationship with the EU, hampering our ability to work internationally on cross-border issues.

The ECtHR rules in favour of the UK in the vast majority of its decisions

The ECtHR routinely rules in favour of the United Kingdom. Since 2011, on average only around [5 judgments per year](#) found a human rights violation by the UK when over 7,000 cases have been before a judge. **In 2022, the UK received 0.002% of the [total ECtHR judgments finding an ECHR violation](#).**

We note the recent controversy surrounding the ECtHR's interim measures decision in the Rwanda litigation. However, we would highlight the following:

- The ECtHR [decision](#) merely paused the removal of three people while their cases awaited consideration by UK courts. The High Court subsequently [found](#) eight individual decisions about removal to Rwanda were flawed and unlawful.
- The [majority in the Court of Appeal](#) found that the policy posed a real risk of people being subject to torture or serious ill-treatment, showing that serious human rights issues are at stake.
- There is no guarantee that replacing the ECHR with a 'British Bill of Rights' would lead to a different outcome. **Any Bill of Rights worthy of its name would prohibit torture or serious ill-treatment, with independent judicial oversight of those rights.**

Rights protections guaranteed by the ECHR

Whilst the Human Rights Act means most individuals can now enforce their ECHR rights in UK courts, we would highlight the following important examples where individuals were only able to enforce their rights by an application to the ECtHR:

- **Press freedom:** The ECtHR [found](#) a domestic court injunction banning the Sunday Times from publishing the *Spycatcher* book was a breach of the right to free expression (Article 10 ECHR).
- **Rights of LGBT military personnel:** The discharge of Royal Navy personnel because they were gay breached their right to a private life ([Article 8 ECHR](#)). The case led to the UK changing its policy on LGBT military personnel serving openly.
- **Right to life and freedom from torture:** After proceedings were started at the ECtHR, the UK Government [formally apologised](#) to the family of a Falklands veteran who choked to death in police handcuffs.

Conclusion

There has never been a more important time for the UK to lead in the Council of Europe, supporting and promoting democracy, human rights and the rule of law across the continent.

JUSTICE calls on politicians to make the principled and pragmatic case in support of the UK remaining a signatory of the ECHR ahead of the next election.

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