

Chapter 8 – Human Rights

A human right is a right which we are entitled to simply because we are human. Most people would agree that included in that category are rights such as the right to life, the right to a fair trial, the right to practise any religion we choose, the right to free speech and the right to live free from torture. There are plenty of other examples too.

The law relating to human rights is an area which is influenced to a large degree by Europe, and this is another of those issues which can cause confusion to those that are new to the study of law. The confusion stems from the fact that European “laws” on human rights are not related to the European Union system that we looked at in the previous chapter. There we saw that the European Union can make laws which have an impact on the UK and other member countries. These tend to relate to economic activity rather than human rights. The European Court of Justice that we mentioned briefly deals with issues which arise from the laws created by the European Union, not human rights. The European dimension of human rights comes out of the European Convention on Human Rights and cases about human rights are dealt with in the European Court of Human Rights. These things are not related to the European Union institutions.

Much like the general concept of the union of Europe, the European Convention on Human Rights was developed after the Second World War with the aim of avoiding a repetition of the horrors that had occurred at that time. Drafted in 1950, it came into force in 1953 and sets out those fundamental human rights we talked about earlier. In addition, it includes rights relating to privacy, education, marriage and discrimination amongst others. Rights have been added to it in the years since it was originally drafted.

An important feature of the European Convention on Human Rights is that for many years it was not strictly part of English law. Judges could refer to it in the courts and use it to help them interpret statutory provisions if they thought it was helpful to do so, but it generally played a limited part in English law. An individual who thought their human rights were being denied in some way could take their case to the European Court of Human Rights, but this was generally a slow and costly process.

This changed to an extent with the introduction in 2000 of the Human Rights Act 1998. This legislation was passed by the UK Parliament and paved the way for human rights to take on a more

established role in English law. The main changes made were that English courts can now give a remedy to someone who has suffered the breach of a "convention right", which is a human right from the European Convention on Human Rights which has been given some effect in English law by the Human Rights Act 1998. This in turn means that individuals no longer need to take their case to the European Court of Human Rights to get the justice they seek.

In addition, English courts must now interpret legislation to be in line with the convention rights wherever possible. Note however, that they cannot override UK legislation if it is contrary to those convention rights. What they can do in that instance is make a declaration that the particular piece of legislation is not compatible with the convention rights and this will often lead to a change in the law by Parliament. Finally, the courts must also now take into account decisions and opinions of the European Court of Human Rights.

It is fair to say that the issue of human rights is an area of law that has proved to be hugely controversial. Whilst most people would not dispute the importance of such rights, many would argue that English law has sufficient mechanisms within it to protect those rights without the need for reference to the European Convention. After all, English law already contains laws which prevent us from suffering torture, protecting our privacy to some degree, allowing us to marry, safeguarding our freedom of expression within reasonable limits and so on. On the other hand, the number of cases which came before the European Court of Human Rights before 2000 and the number of times the 1998 Act has been implemented by the courts since 2000 suggests all is not rosy in the garden. As always, the true position is no doubt somewhere in the middle; the Convention and the 1998 Act have no doubt helped to ensure the protection of human rights, but there is also a danger that the courts take some of the provisions a little too far in some cases.

In this chapter we have looked at human rights and how they are protected. Remember that this is a separate issue to the European Union system and the European Court of Justice. If I have say, a value added tax dispute, then I might end up appealing the decision right up to the European Court of Justice on a point of law if it is important enough. The European Convention on Human Rights and the European Court of Human Rights are there to protect my human rights, for example if I felt that my freedom to practise my religion was being compromised. It is important to appreciate the difference between the two aspects of European law.