

Response to the Joint Committee on Human Rights Inquiry: 20 years of the Human Rights Act

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Submission by René Cassin, UK
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Introduction

In this submission, René Cassin seeks to assist the Joint Committee on Human Rights in their inquiry into the UK Human Rights Act (HRA).

Recognition of the need to protect human rights, and the framework of international agreements to protect them, sprang directly from the Holocaust. The Universal Declaration of Human Rights and the European Convention on Human Rights, which is transposed into UK law through the HRA, both emerged in the aftermath of the Second World War as practical expressions of the determination to prevent such horrors recurring.

Given René Cassin's areas of expertise, this submission will directly address Questions one, three and four, as stated in the terms of reference.

In answer to Question One, we will highlight the improvements that have been made to people's lives as a result of the HRA, both through court judgements made in the UK and the Section 6(1) provision.

In answer to Question Three, we will state that, while improvements do not need to be made to the HRA itself, more needs to be done to understanding and awareness of the HRA.

In answer to Question Four, we will discuss the future of the HRA and its increased importance given our departure from the European Charter on Human Rights.

About René Cassin

René Cassin is a human rights organisation that promotes and protects universal human rights, drawing upon Jewish experience and values. We campaign and inform on issues such as discrimination, asylum, modern day slavery and human trafficking and general human rights protections.

The organisation is named in honour of Monsieur René Cassin, a French Jew and Nobel Laureate who was one of the principal co-drafters of the Universal Declaration of Human Rights.

Q1. Has the HRA succeeded in its aims as they were set out in 1997/8?

Has the HRA improved individual rights in the UK, rather than requiring litigants to go to the ECHR for justice? And, if so, has this improved citizens' lives?

- The HRA was designed to bring the rights in the European Convention on Human Rights (ECHR) into domestic law, enabling people to raise legal claims in the UK. The effect of the HRA has been to ensure protection and enforcement of these basic rights are more accessible to people in the UK. Before passage of the HRA, claims related to the rights in the ECHR had to be raised at the European Court of Human Rights in Strasbourg, often making a case prohibitively expensive and time consuming, creating a class of people for whom it was unfeasible to ever bring a claim.
- By 'Bringing Rights Home', individual rights in the UK have been improved through key legal judgements. For example, victims of sexual crimes must have their claims properly investigated by the police¹, sexuality should not preclude individuals from protection against being kicked out of their home when a spouse passes away², and local councils must provide suitable accommodation to those with disabilities³.
- The Jewish experience is intertwined with that of the refugee, and of significance to René Cassin are the ways in which the HRA protects refugees and asylum seekers⁴. For example, Article 3 of the HRA has played a notable role in guaranteeing the mental health of refugees and asylum seekers. If there is a risk that the applicant will suffer serious mental health issues upon return without adequate support, Article 3 can be invoked to prevent removal. *In Y and Z (Sri Lanka) v. Secretary of State for the Home Department [2009]*⁵ the applicants had been tortured and raped by security personnel. The Court of Appeal held that returning them to Sri Lanka would be so traumatic that they would be unable to seek the psychological support they required, and so would bring a high likelihood of suicide. Such inhuman treatment would clearly breach their Article 3 rights. Like Article 3, Article 8 has also proved important for protecting the mental health of refugees and asylum seekers. *In R v. Secretary of State for the Home Department, ex parte Razgar [2004]*⁶ the appellant claimed that return to Germany would have caused him serious psychological trauma, although there was no risk of an Article 3 violation. The

¹ Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents) [2018] UKSC 11

² Ghaidan v Godin-Mendoza [2002] EWCA Civ 1533; [2004] UKHL 30

³ R (Bernard) v Enfield London Borough Council [2002] EWHC 2282

⁴ For more information, see: René Cassin, Refugees, Asylum Seekers and the Human Rights Act

<http://www.renecassin.org/refugees-asylum-seekers-and-the-human-rights-act/>

⁵ Y (Sri Lanka) v. Secretary of State for the Home department; Z (Sri Lanka) v. Secretary of State for the Home Department, [2009] EWCA Civ 362, United Kingdom: Court of Appeal (England and Wales), 29 April 2009.

⁶ R v. Secretary of State for the Home Department, ex parte Razgar, [2004] UKHL 27, United Kingdom: House of Lords (Judicial Committee), 17 June 2004.

House of Lords ruled that he should not be removed; mental stability is fundamental for the enjoyment of private life.

- The HRA also protects refugees while they are in the UK. In 2012⁷ the High Court ruled that the systematic failure of the Home Office to provide support for asylum seekers while they waited for a decision on a further claim for asylum – a delay of at least 15 days – was causing homelessness and destitution. The policy of delaying consideration for support was declared unlawful, as it produced a risk of an Article 3 breach.
- The importance of the HRA for children's rights was proved when British judges ruled that three youths and a dependent adult should be immediately brought from 'The Jungle' camp in Calais to their relatives in the UK⁸. They had initially been rejected on the grounds that the Dublin Regulation required them to first apply for asylum in France, followed by a request from Paris to join their relatives in the UK. This process, noted the tribunal, can take almost a year. It ruled that, considering the vulnerability of the applicants and the conditions in the camp, "the Secretary of State's refusal to permit the swift admission to the United Kingdom of the first four Applicants would interfere disproportionately with the right to respect to family life under Article 8 ECHR"⁹.
- Such examples reveal the importance of the HRA in improving people's lives in the UK, particularly vulnerable groups such as refugees and asylum seekers, by letting people raise legal claims in the UK.

Has the s6 provision making it unlawful for public bodies to act in a way which is incompatible with a Convention Right had an effect? Parliament to the judiciary? And, if so, has this had a meaningful impact?

- The section 6(1) (s6) provision in the HRA, which makes it unlawful for public bodies to act in a way which is incompatible with Convention rights, has had a meaningful impact and facilitated positive changes to service delivery, practises and policy. In May 2018, the High Court found a senior coroner's 'cab rank' queuing policy for handling burials to be in breach of Article 9 (freedom of religion or belief) in conjunction with Article 14 (protection from discrimination) under the HRA¹⁰. Previously, the Senior Coroner for Inner London had said they would not fast-track inquests on religious or cultural grounds despite the fact that under Jewish and Islamic law, bodies must be buried on the day of death or as soon as possible afterwards. In response to the High Court ruling, René Cassin trustee Alex Goldberg stated "The High Court has upheld the principles outlined in Universal Declaration of Human Rights on its

⁷ MK (1) and AH (2) v. The Secretary of State for the Home Department, [2012] EWHC 1896 (Admin), United Kingdom: High Court (England and Wales), 10 July 2012.

⁸ Bowcott O. Allowing four Syrian refugees into UK 'may set limited precedent'. The Guardian. 2016. Available at: <http://www.theguardian.com/uk-news/2016/jan/29/allowing-four-syrian-refugees-into-uk-may-set-limited-precedent>. [Accessed 7 February 2016].

⁹ R (on the application of ZAT and Others) v Secretary of State for the Home Department, IJR [2016] UKUT 61 (IAC), 22 January 2016.

¹⁰ Adath Yisroel Burial Society v HM Senior Coroner for Inner North London [2018] EWHC 969

70th anniversary. The ruling recognises our individuality, our freedom and our humanity. And that recognition must bring some comfort to people struggling to come to terms with the loss of a loved one”¹¹. While the case highlights that public officials are not always aware of the HRA and their corresponding duties, the s6 provision has had a positive effect in protecting religious practises.

- NHS training manuals on the application of the HRA to hospital care further illustrates the importance of the HRA to the Jewish community. The NHS trains its staff that an Orthodox Jewish woman may become distressed at being placed in a bed on a mixed ward owing to her religious beliefs and that this is likely to be a breach of her Article 8 rights¹². As a direct result of the HRA, respect for religious conviction in the medical treatment of religious groups is now taught as best practice.
- The HRA has been effective in ensuring that public bodies review their policy and governance in line with human rights standards¹³. For example, a precedent was set for elderly couples to be housed in the same residential home after attempts to separate a couple in 2005 were challenged under Article 8 (respect for private and family life)¹⁴.
- There are a number of useful Convention rights which, thanks to s6 of the HRA, all public authorities including mental health care providers must consider in their actions. For mental health patients, who are often vulnerable and therefore at risk if their human rights are breached, the HRA is a vital protection. When things go wrong the HRA ensures that there is accountability. It allows individuals to take court action when their human rights have been violated, and it gives them a way of seeking justice. Derivation of Liberty Safeguards (DOLs) were introduced after the Bournemouth¹⁵ case in which HL, an adult male with severe autism and learning difficulties, was unlawfully detained under the Mental Health Act. He was kept at Bournemouth hospital under the influence of a sedative and his carers were prevented from visiting him so that they would not remove him. When the case reached the European Court of Human Rights, it was declared that this was an unlawful deprivation of HL's liberty and, therefore, a breach of his Article 5 right to liberty. The case highlighted the lack of safeguards not just in this case but in all similar situations. In response, the UK Government initiated a widespread consultation which

¹¹ Alex Goldberg, René Cassin, <http://www.renecassin.org/ruling-on-religious-burials-recognises-our-individuality-our-freedom-and-our-humanity/>

¹² Human Rights in Healthcare, Department of Health, Page 16, <http://www.ncuh.nhs.uk/about-us/equality-and-diversity/documents/human-rights-in-healthcare-short.pdf>

¹³ Louis Dore, 'HRA: What has it done for us?', <http://www.independent.co.uk/news/uk/politics/human-rights-act-what-has-it-done-for-us-10253168.html>, 26/5/16; see also <https://www.amnesty.org.uk/eight-reasons-why-human-rights-act-has-made-uk-better-place-british-bill-of-rights>, 26/5/16

¹⁴ The Guardian (2006) <https://www.theguardian.com/society/2006/feb/03/longtermcare.uknews>

¹⁵ R v Bournemouth Community and Mental Health NHS Trust

resulted in the Mental Capacity Act 2005 being amended to include the administrative and judicial safeguards known as the DOLS¹⁶.

Q3. Could the HRA be improved?

Are there any improvements that could be made to primary legislation?

- The European Convention on Human Rights (ECHR), upon which the HRA is based, was Europe's response to the horror of the Holocaust. These rights protect the vulnerable and the disadvantaged but ultimately benefit all of us.
- The Jewish community has voiced concern about proposals to change the HRA, as this risks regressing from internationally agreed standards set up in the wake of World War Two. In 2016 over 40 Rabbis¹⁷ signed our letter which stated that "the Human Rights Act protects victims of crime, the wrongly accused, the disabled, the mistreated, and the elderly. It has allowed countless people to pursue justice here in the UK and is an instrument the values of which should be celebrated and respected".
- Speaking in 2016, Rabbi Wittenberg, Senior Rabbi of Masorti Judaism UK, strongly put forth his support for the HRA, stating "Details and procedures are always subject to debate and potential improvement. But the [Human Rights] Act protects the rights to life, liberty, freedom from slavery and torture, freedom of religion and conscience, and freedom of speech, among others". He went on to say that "the great narrative of our origin as a people concerns how, as a result of having been slaves ourselves, we become imbued with a unique responsibility and passion for the pursuit of justice and liberty, subject only to the service of God and God's creation"¹⁸.

Are there any improvements that could be made to secondary legislation / supporting services?

- While the HRA itself does not need to be improved, more needs to be done to increase awareness and understanding of how the HRA works.
- Education is a vital element of our work. We empower tomorrow's human rights advocates and activists by equipping them with the knowledge and skills to promote social justice and human rights. This is achieved through the René Cassin Fellowship Programme and by ensuring that school and university

¹⁶ For more information, see www.renecassin.org/wp-content/uploads/2016/01/20160121-The-HRA-and-mental-health-FINAL.pdf

¹⁷ 'Rabbis Urge New Justice Secretary to keep the Human Rights Act', <http://www.renecassin.org/rabbis-urge-justice-secretary-to-keep-hra/>

¹⁸ Rabbi Jonathan Wittenberg, <http://jonathanwittenberg.org/the-jewish-year/withdrawing-from-the-human-rights-act-a-jewish-question/>

students and activists understand the essential links between human rights and Jewish values and experience.

- RightsInfo, a digital media space for human rights, recognises that “understanding of and support for human rights in the UK is low”, and aims to change this through infographics, stories, videos and explainers¹⁹.
- The government must do more to combat misleading or inaccurate representations of the HRA, and instead facilitate a culture of respect for human rights.

Q4. The future of the HRA

- The rights guaranteed in the ECHR and, more recently, the HRA, speak directly to the Jewish experience. At their root is the notion that all humans are vested with a dignity that governments have a duty to protect.
- As we depart from the European Union, Brexit has resulted in the loss of European Charter on Human Rights, which enshrines vital political, social and economic rights, including a guarantee on human dignity. Therefore, the HRA is of greater importance now as way to ensure rights for UK citizens.
- 35 Rabbis and other leaders of the Jewish community have signed our letter to David Davis MP, then Secretary of State for Exiting the European Union, urging him to use our withdrawal from the EU as an opportunity to protect and strengthen the provision of human rights²⁰. In the letter, Jewish leaders stated “Human rights are innate to Jewish values and the Jewish experience. As leaders and members of the Jewish community, we are concerned that the loss of EU human rights safeguards would have worrying ramifications for vulnerable communities throughout the United Kingdom. The EU Charter of Fundamental Rights also holds an important role in protecting the right to manifest religion and belief. Recognising the role of the UK in developing a European human rights framework in response to the horrors of the Holocaust, we urge the Government to once again put this country at the forefront of the promotion of human rights, and to use our withdrawal from the European Union as an opportunity to protect and strengthen the provision of human rights”.

Conclusion

- As the Jewish voice for human rights, we strongly support the Human Rights Act and recognise the meaningful impact that it has had on the Jewish community, as well as on other minority groups and society as a whole.

¹⁹ RightInfo, <https://rightsinfo.org/about/>

²⁰ ‘Over 30 Rabbis and other leaders of the Jewish community sign our letter to David Davis MP’
<http://www.renecassin.org/30-rabbis-and-jewish-community-leaders-sign-our-letter-to-david-davis-mp/>