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Human rights and law

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Introduction

This course considers the growth of human rights and humanitarian law before looking at the European Convention on Human Rights (ECHR) in detail. It will also look at the position of human rights in the UK and the effect of the Human Rights Act 1998.

This OpenLearn course provides a sample of Level 1 study in Law.

Learning Outcomes

After studying this course, you should be able to:

- understand the historical growth of the idea of human rights
- demonstrate an awareness of the international context of human rights
- demonstrate an awareness of the position of human rights in the UK prior to 1998
- understand the importance of the Human Rights Act 1998
- analyse and evaluate concepts and ideas.

1 Course overview

This course will look at the concept of rights in their broadest sense:

- a freedom to do or be protected from something;
- a claim to do or enjoy something;
- a power to do something which affects others and not to be challenged over that use of power.

This concept of rights defines the position of an individual and does not consider collective or majority rights. As you may already know, the subject of rights, and in particular of human rights, is a growing area. There are a number of differing academic opinions as ideas about rights change and expand alongside changes and developments in society.

Activity 1: Rights

0 hour(s) 15 minutes(s)

The table below lists articles and corresponding rights established by the European Convention on Human Rights (ECHR). Look at that table and think of an example of a right for each of the three categories below:

- a freedom to do or be protected from something;
- a claim to do or enjoy something;
- a power to do something which affects others and not to be challenged over that use of power.

Table 1 European Convention articles and corresponding rights

Article of ECHR	Right
2	Right to life
3	Right to be free from torture and from inhuman and degrading treatment
4	Freedom from slavery and enforced labour
5	Liberty of the person
6	Right to a fair trial
7	Freedom from retrospective punishment
8	Right to respect for private and family life, home and correspondence
9	Freedom of thought, conscience and religion
10	Freedom to receive and impart ideas and information
11	Freedom of association
12	Right to marry and found a family
13	Right to an effective remedy
14	Right to enjoy other Convention rights without discrimination

Protocol 1 Article 1*	Right to peaceful enjoyment of possessions
Protocol 1 Article 2	Right to education
Protocol 1 Article 3	Right to free and fair elections
Protocol 4 Article 1	Prohibition of imprisonment for debt
Protocol 6 Article 1	Abolition of the death penalty
Protocol 7 Article 2	Right to appeal on conviction or sentence
Protocol 7 Article 3	Right to compensation for victims of miscarriages of justice

* A total of 14 protocols have been added to the original ECHR. These reflect changing cultures and needs.

Although there may be different ways of interpreting these categories, some of the examples you may be aware of include:

- a freedom to do or to be protected from something, such as freedom of association, freedom from slavery and enforced labour, freedom from retrospective punishment;
- a claim to do or enjoy something, such as the right to peaceful enjoyment of possessions, the right to a fair trial;
- a power to do something which affects others and not to be challenged over that use of power, such as the freedom to receive and impart ideas and information.

2 Part A: The growth of international human rights and humanitarian law

2.1 Treaties, conventions and constitutions

International human rights are part of a much wider area, public international law, which in broad terms encompasses law relating to the legal rights, duties and powers of one nation state in relation to its dealings with other nation states. These rights, duties and powers are set out in international treaties or conventions. Such treaties and conventions may be global in their application or restricted to certain regions of the world. Reference to a work on international human rights treaties would reveal over fifty different treaties, conventions and protocols (instruments which effect an amendment to a treaty or convention).

Box 1: The verdict on public international law

As this course (and the other W100 courses available on OpenLearn: *Europe and the law*, *Judges and the law*, *Making and using rules*) examine rules, rights and justice, it is appropriate to digress for a moment or two to note that there are academic arguments whether there is any such concept as public international law. Individual nation states are supreme in their own law making and there is no such thing as an international legislative body or court that is able to make and enforce laws binding upon every nation state in the world. This inevitably calls into question the status of international agreements and treaties, which are negotiated and agreed between nation states. If there is no system of enforcing or policing such agreements, then what is the purpose in their negotiation? The answer to this question is that there is generally a level of standard to which states adhere in order to achieve acceptance within the world order. Any state falling short of such standards is likely to incur public condemnation either by the United Nations or by other nations whose acceptance and support (financial or political) the particular nation state entreats.

In the late seventeenth century major political, social and economic upheavals saw the emergence of new democracies with written constitutions. Documents such as the American Declaration of Independence and the French Declaration des Droits de l'Homme et du Citoyen began to lay the framework for the recognition of rights such as the freedom of speech and assembly. In these documents the development of modern human international law can be seen. Whilst such documents differed in their detailed content, certain general principles underpinned them:

- Every human being has certain rights, which they have by virtue of their humanity.
- It is not possible to deprive anyone of those rights.
- The rule of law must be recognised. The rule of law requires just laws to be applied consistently, independently, impartially and with just procedure. Laws are regarded as just where they are made in accordance with a fair and democratic procedure.

THE UNIVERSAL DECLARATION OF Human Rights

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations among nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

NOW THEREFORE THE GENERAL ASSEMBLY

PROCLAIMS this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

UNITED NATIONS

Figure 1 The Universal Declaration of Human Rights (you can read the full text on the UN website)

Such principles are often found in the written constitutions of nation states. The media frequently use the American constitution as an example of a written constitution, but many other countries have such constitutions, for example Australia, Canada, India, Italy and South Africa. The UK has an unwritten constitution – in the UK there is no one source of constitutional rights. It has been argued that this means there is greater flexibility and hence protection of rights in the UK.

This is an argument to which you will return when you consider the incorporation of the European Convention on Human Rights into UK law later in this course.

Each nation state is regarded as sovereign, with complete freedom to deal with its own nationals and territory. There may be a written constitution with rights for citizens or an unwritten constitution where rights are created by trial and custom. International law imposes constraints on nation states. The development of international human rights law has been slow and incremental. To begin with, nation states entered pacts and international agreements concerning trade and boundaries, matters that were in their self-interest and ensured stability and cooperation. Growth of international human rights law was gradual and only emerged in the forms recognised today at the end of the nineteenth century. Since then there has been a huge growth in the recognition of human rights. Numerous treaties and organisations now exist for the protection of such rights. These include regional organisations: European, American, African, Asian and Arab. Core charters include the Universal Declaration of Human Rights, the European Convention on Human Rights, the American Convention on Human Rights and the African Charter of Human and People's Rights. In turn there has been a growth in international courts and tribunals.

2.2 Slavery reform

Some of the first international concerns over human rights, as they would now be recognised, were expressed about slavery at the end of the eighteenth century. Somerset's case in 1772 challenged the acceptance of slavery in the UK. This case is regarded as a turning point, as statutory abolition followed in the UK. Out of this changing social, political and legal attitude towards slavery grew a movement which sought to prohibit slavery internationally. It was not possible to secure the freedom of slaves in all countries at that time as different nations had differing political and social attitudes. So one of the first steps was to seek to abolish the trade in slaves. The aim of this was to prevent any further increase in the number of slaves. Over the following century many countries abolished slavery. The League of Nations, established by the 1919 Versailles Treaty to promote international peace and security and guarantee the rights of minorities, proclaimed as one of its objectives the complete suppression of slavery in all its forms and of the slave trade by land and sea.

Slavery and any associated practices are condemned in Article 4 of the Universal Declaration of Human Rights, Article 4 of the European Convention on Human Rights, Article 5 of the African Charter of Human and People's Rights and Article 6 of the American Convention on Human Rights.

These rights have evolved over the past 250 years and prohibition against slavery is now well established within international law. The challenge now is not in agreeing that slavery should be prohibited but in seeing that those international rules are enforced and respected.

2.3 The Red Cross

Humanitarian law was another area of international growth in the recognition of human rights. It gathered pace in the nineteenth century due to the work of Henri Dunant, a Swiss philanthropist. He witnessed several battles where great atrocities were committed by the armies of nation states. These experiences led him to attempt to establish a permanent system for humanitarian relief, where private societies would supplement the work of army medical corps of nation states. In 1863 a conference of sixteen nation states was organised and they chose the emblem of a red cross on a white background (the Swiss flag in reverse) to represent humanitarian aid. The 1864 Geneva Convention followed, where 12 nation states agreed to respect the community of military hospitals and their staff, to care for sick and wounded soldiers whatever their nationality and to respect the emblem of the Red Cross. This has since expanded to cover, for example, prisoners of war.

This has led to the general recognition that the conditions of the sick and the wounded, and the care of prisoners of war, were matters of concern for international law. In turn this made a major contribution to processes where respect for the individual became paramount and respect for human rights a generally recognised international obligation.

Figure 2 The Swiss philanthropist Henri Dunant

Photo: © Corbis

2.4 Summary of Part A

Part A explored the development of humanitarian and human rights law. The development of new democracies with written constitutions laid the framework for the general recognition of rights such as freedom of speech. General principles emerged:

- certain rights exist because a human being is entitled to ‘humanity’;
- those rights cannot be denied or taken away;
- recognition of the rule of law.

3 Part B: The European Convention on Human Rights

3.1 Part B overview

You may already be aware of cases (such as that of Diane Pretty) where articles of the European Convention on Human Rights were under debate. Here you will look at its legal implications in more detail. You will consider how the European Convention on Human Rights came into being, why it was considered necessary to create such an instrument, what are its terms and how those terms are interpreted and enforced.

(If interested, the ECHR is also explored in another OpenLearn course, *Europe and the law*)

The European Convention on Human Rights illustrates how certain rights can become elevated to a legal significance such that governments must honour them and ensure that their domestic laws respect these rights even though this may lead to the interests of a minority being upheld against the views of a majority of the population.

The manner in which rights can become law is discussed in Part C, with particular reference to how English law has dealt with this issue and how future laws may also be influenced by it.

3.2 What is the European Convention on Human Rights?

In the aftermath of the Second World War there were public disclosures of huge numbers of cases of brutal, inhuman and tyrannical treatment of people, frequently within the civilian populations of occupied countries. Many serious concerns arose about the way in which millions of people had been mistreated at the instigation of or with the connivance or concurrence of government. There was almost universal disgust and condemnation at the disclosures made, together with a general recognition that such events must not be allowed to happen again. As a result, a number of countries in Europe came together and created the Council of Europe in 1949. At this time it was felt that the United Nations was not likely to be fully effective at protecting individual human rights because of the growing divide between a democratic west and a communist east in Europe. The subsequent division of Germany and the building of the Berlin Wall contributed to this feeling. The terms of the European Convention on Human Rights in 1950 were negotiated over a period of 14 months. States agreed that everyone within their individual jurisdictions should be afforded what were considered to be their basic rights and freedoms, which should be enshrined within the laws of each state. Many nations, including the UK, were opposed to the establishment of a European court of human rights as they did not want an international court judging their own domestic law. To ensure that negotiations did not collapse a compromise position was reached under which nation states signing up to the European Convention on Human Rights could choose whether or not to allow their

individual citizens the right to bring a complaint, and also whether they wished to submit to the jurisdiction of the court.

Despite reservations about a human rights court, the UK became the first nation to ratify the European Convention on Human Rights (ECHR). At this time the UK regarded the development of human rights protections within Europe as an important part of its foreign policy. The ECHR had the potential to play an important role in security and in dealings with the new international organisation, the United Nations. It was felt that the UK itself had adequate protection of human rights through existing common law principles.

Activity 2 gives you the opportunity to consolidate your understanding of the ECHR.

Activity 2: The European Convention on Human Rights and the UK

0 hour(s) 30 minutes(s)

From what you have read of this course so far, make some brief notes about the European Convention on Human Rights in relation to the UK.

1. The UK has no single source of constitutional rights. It is said that the UK has an 'unwritten constitution'.
2. The UK was a member of the Council of Europe, which was created in 1949.
3. Like many other nations, the UK was opposed to a European Court of Human Rights as it did not want an international court judging its domestic law.
4. However, the UK was the first nation to ratify the ECHR.
5. Although the UK saw the importance of the ECHR in terms of foreign policy and security, it considered at this stage that the existing common law provided adequate protection of human rights in the UK.

You may find it helpful to think about these points when you come to consider the English Courts and human rights in Part C of this course.

In this Comment, the notes are listed as a number of key points. Of course, you may have chosen to use an alternative form of notes, for example in the form of a diagram. Use the style of note taking that you find most useful.

3.3 What were the fundamental human rights which required protection?

Earlier in this course you explored why certain rights were considered to be basic human rights. These can be described as those rights of individuals or groups relating to human dignity and fundamental freedoms, which require legal protection from adverse interference by the state, where those rights derive from the fact of being human. Such rights can be traced back to two aspects of international law, namely customary international law and treaty law. The former derives from the customs adopted between nations. They follow from a sense that they have, over time, become accepted as part of international law even though never formally reduced into writing. You may think that there is a sense of analogy with some aspects of the English common law. Treaty law, on the other hand, relates to those treaties (formal documents) which nations have negotiated and signed with the intention of binding the state to an international agreement to achieve

the standards defined within the treaty. For instance, one of the first treaties to follow the conclusion of the Second World War opens with a recitation:

> We, the peoples of the United Nations, determined
>
> - to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
> - to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small …
>
> (United Nations Charter)

These words were written in 1948 when horrific memories of the genocide, cruelty, torture and barbarity of war were still fresh in the minds of the peoples of the world, even in countries which had not been directly affected. You may feel that their aim has not been achieved, as war still rages in many countries and wide-scale human rights abuses still occur. A greater awareness and acceptance of rights on the international stage has occurred, however, even though many feel that respect and enforcement mechanisms are, on occasion, lacking.

3.4 The development of the European Convention on Human Rights

The aftermath of the Second World War was a time of great activity in the realms of human rights throughout the world, and the United Nations Charter itself, signed on 26 June 1945, included an obligation on states to respect fundamental human rights and freedoms. The development of an International Bill of Rights was significantly influenced by the commencement of the **Cold War**. However, that did not prevent the signing of the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights, both in 1948.

Meanwhile the countries of Western Europe had come to the conclusion that there was a need to prevent any recurrence of the atrocities of the Second World War, to prevent the creation of powerful dictatorships and to set an example of liberty and freedom in contrast to the totalitarianism of the USSR. This gave rise to the creation of the Council of Europe in 1949 (not to be confused with the Council of Ministers in the EU). The Council of Europe energetically set to work on negotiation and formulation of what was intended to become a legally binding convention on human rights for the nations of Europe. The intention was that for the first time human beings within Europe should have human rights enforceable under international law, before a court independent of the nation states, against public authorities. At the same time there was also a movement towards what subsequently become known as the EU.

Box 2: Differences between the ECHR and EU treaties

It is important to remember that the European Convention on Human Rights and the treaties of the EU are quite separate. The European Convention on Human Rights deals with human rights and their enforcement by the institutions created by the Convention. The EU treaties originally dealt with issues connected with trade between the member states.

Subsequent treaties have expanded the area of activities covered by the EU treaties, creating laws and regulations which only apply to treaty matters; there are separate institutions created by the EU treaties for dealing with enforcement of these laws and regulations. The European Convention on Human Rights and the EU treaties are separate and distinct. You should, however, note that the member states of the EU agreed that no state would be admitted to membership of the EU unless it accepted the fundamental principles of the European Convention on Human Rights and agreed to declare itself bound by it.

The European Convention on Human Rights was drafted taking the Universal Declaration of Human Rights 1948 as its starting point, but with the pursuit of the aims and objectives of the Council of Europe, through the maintenance and further realisation of human rights and fundamental freedoms, firmly in mind. Once its terms had been agreed it was opened for signature in Rome on 4 November 1950 and took effect once ten of the subscribing states, described as 'high contracting parties' (HCPs) in the document, had executed and deposited with the Secretary General of the Council of Europe the necessary instrument of ratification. It entered into force in September 1953.

The European Convention on Human Rights represented the first steps for the collective enforcement of certain of the rights set out in the Universal Declaration since, in addition to defining a list of civil and political rights and freedoms, it created a means of enforcement of the obligations entered into by HCPs. Three institutions or organisations were set up to discharge this responsibility, namely the European Commission of Human Rights (usually referred to as the Commission, which was set up in 1954), the European Court of Human Rights (which was not set up until 1959) and the Committee of Ministers of the Council of Europe (i.e. the respective Minister of Foreign Affairs of each of the member states or their representative).

Whilst the Convention as originally drafted provided for complaints to be brought against HCPs either by another HCP or by individual applicants (which might be either individuals, groups of individuals or non-governmental organisations), the right of individuals to bring complaints was an option for the individual HCP, so that, unless the state opted in, the individual would be prevented from bringing a complaint against the particular state.

The Convention commences with a number of recitals of the aims to be met, and defines the intentions of the HCPs to achieve these aims in recognition of the various rights and freedoms which are set out in the European Convention on Human Rights. The recitals are followed by a number of paragraphs called 'articles'.

Article 1 of the Convention addresses the obligation cast upon each HCP to ensure that every person within its jurisdiction is granted the rights and freedoms set out in Section I of the Convention.

Activity 3 helps you to revise the articles of the European Convention on Human Rights.

Activity 3: The articles of the European Convention on Human Rights

0 hour(s) 20 minutes(s)

Drawing on your previous knowledge and the information you have been provided with in this course, please download and print the PDF table below then complete the table by adding a brief summary of the human rights covered by each article. You do not need to use the precise wording of the article and you may not be able to complete all the entries, but try and complete as many as you can.

Click here to open the blank table.

Section I of the Convention sets out seventeen articles defining the fundamental rights and freedoms accorded under the European Convention on Human Rights.

Article 2 covers the right to life. This did not originally prohibit the death penalty. Protocol 6 subsequently abolished the death penalty in times of peace. Protocol 13 abolished the death penalty in times of war (and has yet to be ratified by the UK) and provides an example of how the European Convention on Human Rights has responded to social and political change. As you may have seen in the case of Diane Pretty, the European Court of Human Rights ruled that there was no corollary right to die, either with the assistance of a third party or a public authority.

Article 3 covers the prohibition of torture. Case law here has considered the use of hooding, deprivation of sleep, the use of prolonged assaults, deportation, and serious and prolonged mistreatment of children who were in local authority care.

Article 4 covers the prohibition of slavery and forced labour. The court has rarely considered cases brought under Article 4. Cases considered include individuals who have complained about the work they were required to do while they were in detention. In 2019, the Court published a guide on Article 4.

Article 5 covers the right to liberty and security, and many cases have been considered in this area. It covers matters such as bail pending trial, the review of life sentences and parole, and the detention of terrorists or suspected terrorists.

Article 6 covers the right to a fair trial. This is one of the fundamental principles of the European Convention on Human Rights as it relates to the fair administration of justice. Case law has covered the meaning of a criminal charge, access to legal advice, evidence and procedural impartiality.

Article 7 covers the right not to be punished without law. This requires that punishment can only follow from proper proceedings.

Article 8 covers the right to respect for family and private life. Case law here has been wide ranging and has considered questions of rights in relation to choice in sexual relations, press intrusion, prisoners' letters, police surveillance, the refusal of planning permission, noise pollution, transsexuals and adoption.

Article 9 covers freedom of thought, conscience and religion. Case law here has covered limitations on the practising of religion in prison. This right does not include a right to be free from criticism.

Article 10 covers freedom of expression. Case law here has included injunctions against the printing of stories in newspapers, the seizure of film, the dissemination of information on abortion and pre-trial publicity.

Article 11 covers freedom of assembly and association. Case law here has generally involved union membership, closed shops, and a ban on joining unions.

Article 12 covers the right to marry. The court has always been reluctant to interfere with domestic laws that regulate marriage although it has done so recently in cases involving same sex couples, transsexuals and prisoners.

Article 13 provides the right to an effective remedy. The remedy of judicial review has been challenged under this article. This article was not included in the Human Rights Act 1998.

Article 14 covers the prohibition of discrimination in relation to other rights laid down by the European Convention on Human Rights; it does not provide a right not to be discriminated against.

Article 15 covers derogations in times of emergency. Derogations are permitted in limited circumstances – member states may derogate from their obligations in times of war or public emergency. It is not, however, possible for a state to derogate from Articles 2 (except in lawful deaths resulting from acts of war), 3, 4 and 7.

Article 16 provides for restrictions on political activity of aliens. This is often criticised as it seems contrary to the spirit of the European Convention on Human Rights and implies that it is acceptable to discriminate against a particular group.

Article 17 covers a prohibition of abuse of rights.

Article 18 covers a limitation on use of restrictions on rights.

It is important to bear in mind that the above brief descriptions are simply the headings to the respective rights and freedoms. It is necessary to look at the description of each of them as set out in the Convention to gain a clearer picture of what is encompassed within the particular right or freedom. Furthermore, case law in the form of the decisions made by the European Court of Human Rights, which sits in Strasbourg, has further defined the application and scope of these articles. As a result it is not possible simply to think in terms of a breach of the article. It is also necessary to examine the substantial body of case law (frequently referred to as the Strasbourg jurisprudence or the European Convention on Human Rights jurisprudence) which has been built up over the years.

3.5 The European Court of Human Rights

Section II of the European Convention on Human Rights comprises thirty-three articles, which are all related to the setting up and conduct of proceedings before the European Court of Human Rights. They include, for example, the power to make rules governing how applications are made to the Court, how the Court is conducted, how judges are appointed to the Court and their period of appointment. Each HCP is able to appoint one judge to the European Court of Human Rights.

In its original form the European Convention on Human Rights provided for complaints to undergo a preliminary examination by the Commission, which determined whether the complaint was admissible within the terms of the European Convention on Human Rights. However, individuals were not entitled to bring their cases before the Court. Once admissibility was confirmed, the Commission tried to facilitate a friendly settlement between the parties. If this was not possible then the Commission prepared a report establishing the facts and expressing its opinion on the merits of the case, which was submitted to the Committee of Ministers. The Commission and/or any HCP concerned then had a period of three months following the transmission of the report to the Committee of Ministers within which to bring the case before the Court for a final binding adjudication. Where the case was not referred to the Court, the Committee of Ministers would then decide whether there had been a violation of the European Convention on Human Rights and, if appropriate, award ‘just satisfaction’ to the victim. The Committee of Ministers supervised the execution of the Court's judgments.

The Commission existed until the entry into force of Protocol 11 in 1998. This reformed the system and substituted a full-time single Court for the previous system of Commission, Court and Committee of Ministers.

Section III of the European Convention on Human Rights contains eight articles under the heading ‘Miscellaneous Provisions’. These deal with administrative and formal matters, such as: territorial application – the right of an HCP to make a reservation from some part or parts of the European Convention on Human Rights (when ratifying it, if some existing law in its jurisdiction was not in conformity with the terms of the European Convention on Human Rights); and the arrangements for signature and ratification. Article 59 provided that the European Convention on Human Rights should come into force after ten HCPs had signed their instruments of ratification of the European Convention on Human Rights and deposited them with the Secretary General of the Council of Europe.

In Activity 4 you will consider some of the recent activities of the European Court of Human Rights as reported on their website.

Activity 4: Case law in the EctHR

0 hour(s) 20 minutes(s)

Go to the following website for the European Court of Human Rights: Judgements – .

Spend 10 minutes familiarising yourself with the website. What type of matters has the court been considering recently? Were the matters brought by individuals or member states?

The purpose of this activity was for you to explore and learn more about the structure of the court website, the information it contains and the range of matters that the court is required to consider.

When familiarising yourself with the ECtHR website you may have selected pending cases. Here you would have seen a list of scheduled hearings, date and time, parties and the court of hearing (Section 1, 2, 3 or 4 of the Grand Chamber).

Alternatively, you may have selected case law. This takes you to a database of case law of the ECtHR. If you had selected either the list of recent judgments or the list of recent decisions from the menu on the left-hand side, you would have seen a list of decisions and judgments. For example, between 19 January 2006 and 24 January 2006 there were cases involving Austria, Bulgaria, Cyprus, France, Poland and Turkey. Two cases involved Article 10, six cases involved Article 6, one case involved Article 11 and one case involved Article 14.

If, however, you had selected HUDOC, you would have been taken to the search page of the database.

The website contains a great deal of information about the court and is a useful resource for any student of human rights law.

3.6 The terms of the European Convention on Human Rights

In 1952 the HCPs agreed that the European Convention on Human Rights should be extended to cover additional rights and freedoms. At the time of drafting the original treaty there were heated debates about whether rights relating to property, education and democratic participation were fundamental human rights. As a compromise these were omitted from the original treaty. Their later inclusion was achieved by an instrument known

as a protocol, which, although much shorter than the original ECHR nevertheless followed a similar format. Protocol 1 was signed on 20 March 1952 and it included the following additional rights and freedoms:

- Article 1: Protection of property
- Article 2: Right to education
- Article 3: Right to free elections

Since 1952 there have been a number of additional protocols to the European Convention on Human Rights, so that the Convention must now be considered along with Protocols 1, 4, 6, 7, 12 and 13. Protocol 2 gave the court power to give advisory opinions, and Protocol 9 granted individual applicants the right to bring their cases before the court, although this right only became effective once the relevant HCPs had ratified the Protocol.

You can explore the European Convention on Human Rights and its protocols further in Activity 5.

Activity 5: The terms of the European Convention on Human Rights and its protocols

0 hour(s) 40 minutes(s)

Go to the website for the Council of Europe.

Find treaty 005: 'Convention for the Protection of Human Rights and Fundamental Freedoms', either using the search function on their website or by finding it listed in the Conventions section.

This site contains the actual terms of the European Convention on Human Rights and its protocols. Take some time to explore the terms of the ECHR and its protocols. Try to identify how many protocols have entered into force and how many countries have made a declaration to treaty 005.

The above website gave you the information that the ECHR opened for signature on 4 November 1950 in Rome and that to enter into force ten ratifications were necessary – the date on which these were obtained was 3 September 1953. A series of questions then followed – by clicking on these you were able to find further information about the number of signatories, declarations made and access the full text of the convention.

You should have been able to identify a number of protocols from the information provided. Some protocols have been used to grant additional rights under the Convention (Protocols 1, 4, 6, 7, 12 and 13). Protocols 2, 3, 8, 9 and 10 amended the text of the Convention. However, all provisions amended or added by those protocols have been replaced by Protocol 11 as of 1 November 1998. The use of protocols has allowed the original convention to remain a flexible and living document.

The table below lists the member states of the Council of Europe and the dates on which they signed and ratified the convention. It reflects the position on 31 January 2006.

Table 2: The 46 member states

States	Signature	Ratification	Entry into force
Albania	13/7/1995	2/10/1996	2/10/1996
Andorra	10/11/1994	22/1/1996	22/1/1996

Armenia	25/1/2001	26/4/2002	26/4/2002
Austria	13/12/1957	3/9/1958	3/9/1958
Azerbaijan	25/1/2001	15/4/2002	15/4/2002
Belgium	4/11/1950	14/6/1955	14/6/1955
Bosnia and Herzegovina	24/4/2002	12/7/2002	12/7/2002
Bulgaria	7/5/1992	7/9/1992	7/9/1992
Croatia	6/11/1996	5/11/1997	5/11/1997
Cyprus	16/12/1961	6/10/1962	6/10/1962
Czech Republic	21/2/1991	18/3/1992	1/1/1993
Denmark	4/11/1950	13/4/1953	3/9/1953
Estonia	14/5/1993	16/4/1996	16/4/1996
Finland	5/5/1989	10/5/1990	10/5/1990
France	4/11/1950	3/5/1974	3/5/1974
Georgia	27/4/1999	20/5/1999	20/5/1999
Germany	4/11/1950	5/12/1952	3/9/1953
Greece	28/11/1950	28/11/1974	28/11/1974
Hungary	6/11/1990	5/11/1992	5/11/1992
Iceland	4/11/1950	29/6/1953	3/9/1953
Ireland	4/11/1950	25/2/1953	3/9/1953
Italy	4/11/1950	26/10/1955	26/10/1955
Latvia	10/2/1995	27/6/1997	27/6/1997
Liechtenstein	23/11/1978	8/9/1982	8/9/1982
Lithuania	14/5/1993	20/6/1995	20/6/1995
Luxembourg	4/11/1950	3/9/1953	3/9/1953
Malta	12/12/1966	23/1/1967	23/1/1967
Moldova	13/7/1995	12/9/1997	12/9/1997
Monaco	5/10/2004	30/11/2005	30/11/2005
Netherlands	4/11/1950	31/8/1954	31/8/1954
Norway	4/11/1950	15/1/1952	3/9/1953
Poland	26/11/1991	19/1/1993	19/1/1993
Portugal	22/9/1976	9/11/1978	9/11/1978
Romania	7/10/1993	20/6/1994	20/6/1994
Russia	28/2/1996	5/5/1998	5/5/1998
San Marino	16/11/1988	22/3/1989	22/3/1989
Serbia and Montenegro	3/4/2003	3/3/2004	3/3/2004
Slovakia	21/2/1991	18/3/1992	1/1/1993
Slovenia	14/5/1993	28/6/1994	28/6/1994
Spain	24/11/1977	4/10/1979	4/10/1979
Sweden	28/11/1950	4/2/1952	3/9/1953

Switzerland	21/12/1972	28/11/1974	28/11/1974
The former Yugoslav Republic of Macedonia	9/11/1995	10/4/1997	10/4/1997
Turkey	4/11/1950	18/5/1954	18/5/1954
Ukraine	9/11/1995	11/9/1997	11/9/1997
United Kingdom	4/11/1950	8/3/1951	3/9/1953
Total number of ratifications/accessions:			**46**

Whilst this table provides a list of HCPs, it does not provide a full picture as some of the HCPs have made reservations, declarations and objections. The Council of Europe website (accessed 16 January 2008) provides full details of these, including which articles they concern, the period covered and the reasons why. At the time of writing, 25 HCPs had made reservations or declarations. If you looked at the detailed list on the website, you will have seen that the United Kingdom had issued a statement concerning Article 15 and that the period covered was from 12 November 1998. The domestic legislation referred to contained provisions for the prevention of terrorism and port control and was extended to cover the Isle of Man and the Channel Islands.

The website of the Council of Europe provides a great deal of information. Often one of the challenges is navigating around all the information provided. For this activity you were asked to undertake a search for specific information and there were a number of ways in which you could have achieved this. The Council of Europe has attempted to make its website informative but user friendly with quick links, a search option and an A-Z index. It also clearly indicates when the site was last updated.

3.7 The growth of the ECHR

The achievements of the ECHR are many. It continues to promote human rights and democracy across Europe, it has established jurisprudence in human rights and it has made significant contributions to the continued peace and stability of Europe. Recent reforms mean that the right of individual petition is now guaranteed, so individuals are afforded protection from the power of the state. The number of HCPs has expanded to 47 and access to the protection of the ECHR and the ECtHR is available to over 800 million European citizens.

Whilst this expansion has been welcomed, it has also been rapid. The number of new member states that joined in the 1990s was nineteen followed by a further four in 2000. The size of the Council of Europe has effectively doubled in the last twenty years. This expansion has brought challenges, particularly for the ECtHR. Paul Mahoney, a former Registrar to the Court, has commented that:

> the main task of the Council of Europe and its Court has changed from one of fine-tuning well-established and well-functioning democracies, to that of working to consolidate democracy and the rule of law in new and relatively fragile democracies.

Table 3 illustrates how the number of applications lodged with the ECtHR increases each year.

Table 3: Applications lodged with the ECtHR

Year	Number of applications
1998	18,200
1999	22,600
2000	30,200
2001	31,300
2002	34,500
2003	38,800
2004	44,100

As the number of new applications grows so does the backlog of cases: in 2004 there were 44,100 new applications with the total number of cases pending 82,100 (future projections see this figure rising to 250,000 by 2010). An analysis of the cases pending by member states reveals that the rise in the number of applications is partly due to the enlargement of the Council of Europe after 1990 when countries of the former Soviet Bloc acceded to the ECHR.

Table 4: Cases pending by member states

Member states	% of cases pending at October 2004
Russia	17%
Turkey	13%
Romania	12%
Poland	11%
Ukraine	6%
France	5%
Germany	5%
Italy	4%
Bulgaria	3%
United Kingdom	3%
Czech Republic	3%
All others	19%

Box 3: The European Court of Human Rights

The European Court of Human Rights is an international court based in Strasbourg. It consists of a number of judges equal to the number of member states of the Council of Europe that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court's judges sit in their individual capacity and do not represent any state. In dealing with applications, the Court is assisted by a Registry consisting mainly of lawyers from all the member states (who are also known as legal

secretaries). They are entirely independent of their country of origin and do not represent either applicants or states.

The Court applies the European Convention on Human Rights. Its task is to ensure that states respect the rights and guarantees set out in the Convention. It does this by examining complaints (known as applications) lodged by individuals or, sometimes, by states. Where it finds that a member state has violated one or more of these rights and guarantees, the Court delivers a judgment. Judgments are binding: the countries concerned are under an obligation to comply with them.

An individual may lodge an application with the Court if they consider that they have personally and directly been the victim of a violation of the rights and guarantees set out in the Convention or its Protocols. The violation must have been committed by one of the states bound by the Convention.

The following conditions apply to an application:

- The individual does not need to be a national of one of the States bound by the Convention. The violation they are complaining of must simply have been committed by one of those States within its 'jurisdiction' which usually means within its territory;
- The applicant can be a private individual or a legal entity such as a company or association;
- They must have directly and personally been the victim of the violation they are alleging. They cannot make a general complaint about a law or a measure, for example, because it seems unfair; nor can they complain on behalf of other people (unless they are clearly identified and the applicant is their official representative).

Procedural conditions also apply:

- An applicant must have used all the remedies in the state concerned that might have been able to redress the situation they are complaining about (usually, this will mean an application to the appropriate court, followed by an appeal, where applicable, and even a further appeal to a higher court such as the Supreme Court or Constitutional Court, if there is one);.
- It is not enough merely to make use of these remedies. In so doing, the applicant must also have actually raised their complaints (that is, the substance of the Convention violations they are alleging);.
- An applicant has only six months from the date of the final decision at domestic level (generally speaking, the judgment of the highest court) to lodge an application. After that period the application cannot be accepted by the Court.

Against whom can an application be lodged?

An application can be lodged against one or more of the states bound by the Convention which, in the applicant's opinion, has/have (through one or more acts or omissions directly affecting them) violated the European Convention on Human Rights. The act or omission complained of must have been by one or more public authorities in the state(s) concerned (for example, a court or an administrative authority).

The Court cannot deal with complaints against individuals or private institutions, such as commercial companies.

What can an application be about?

An application must relate to one of the rights set out in the European Convention on Human Rights. Alleged violations may cover a wide range of issues, such as: torture and ill-treatment of prisoners; lawfulness of detention; shortcomings in civil or criminal trials; discrimination in the exercise of a Convention right; parental rights; respect for private life, family life, the home and correspondence; restrictions on expressing an opinion or on imparting or receiving information; freedom to take part in an assembly or demonstration; expulsion and extradition; confiscation of property; and expropriation.

An applicant cannot complain of a violation of any legal instrument other than the European Convention on Human Rights. The Court will not hear matters relating to, for example, the Universal Declaration of Human Rights or the Charter of Fundamental Rights.

How does an applicant apply to the Court?

By sending a letter to the Court giving clear details of the complaint (in which case they will receive an application form which must be filled out) or by filling out an application form directly. The letter and/or the application form should be sent to the Registrar of the European Court of Human Rights. An applicant may write in one of the Court's official languages (English and French) or in an official language of one of the states that have ratified the Convention.

The application must contain:

- a brief summary of the facts and complaints;.
- an indication of the Convention rights alleged to have been violated;.
- the remedies already used;.
- copies of the decisions given in the applicant's case by all the public authorities concerned;.

What are the main features of the proceedings?

Proceedings are conducted in writing. Public hearings are exceptional. Cases are dealt with free of charge.

Although an applicant does not need to be represented by a lawyer in the first stages of the proceedings, they will need a lawyer once their application has been notified to the Government. The great majority of applications are, however, declared inadmissible without being notified to the Government.

What are the main stages in the process?

The Court must first examine whether an application is admissible. This means that the case must comply with certain requirements set out in the Convention. If the conditions are not satisfied, the application will be rejected. If several complaints have been made, the Court may declare one or more of them admissible and dismiss the others.

If an application or one of the complaints is declared inadmissible, that decision is final and cannot be reversed.

If an application or one of the complaints is declared admissible, the Court will encourage the parties (the applicant and the state concerned) to reach a friendly settlement. If no settlement is reached, the Court will consider the application ‘on the merits’ – that is, it will determine whether or not there has been a violation of the Convention.

How long may the process take?

In view of the current backlog of cases, an applicant may have to wait a year before the Court can proceed with its initial examination of an application. Some applications may be

treated as urgent and dealt with as a matter of priority, particularly where the applicant is said to be in imminent physical danger.

What can an applicant obtain?

If the Court finds that there has been a violation, it may award 'just satisfaction', a sum of money in compensation for certain forms of damage. The Court may also require the state concerned to refund the expenses an applicant has incurred in presenting their case. If the Court finds that there has been no violation, an applicant will not have to pay any additional costs (such as those incurred by the respondent state).

Notes:

- The Court is not empowered to overrule national decisions or annul national laws;.
- The Court is not responsible for the execution of its judgments. As soon as it has given judgment, responsibility passes to the Committee of Ministers of the Council of Europe, which has the task of supervising execution and ensuring that any compensation is paid;.
- The Court does not act as a court of appeal vis-Á-vis national courts; it does not rehear cases, it cannot quash, vary or revise their decision;

(Source: based on FAQs at the ECtHR website accessed 17 January 2008)

This reflects the current procedure before ECtHR. Proposals for change are being made due to the increasing number of applications and the time taken to process them. The backlog of cases is of growing concern: in 2004, four per cent of applications has been pending for more than five years. This falls below the standards set by the ECtHR for the length of proceedings.

Protocol 14, adopted in May 2004, is designed to improve the efficiency of the Court and ensure its effectiveness. As the information in Box 3 above illustrates, applications are currently allocated, via one of the Court's sections, to a committee of three judges (for disposal of inadmissible cases) or to a chamber of seven judges (for consideration of borderline cases). The proposals under Protocol 14 would mean that:

- a single judge would reject cases where they are clearly inadmissible from the outset
- a committee of three judges could give judgments in repetitive cases where case law is already well established
- a new admissibility criteria would be introduced in cases where the applicant has not suffered a 'significant disadvantage' and their case has been duly considered by a domestic tribunal, provided there are no general human rights reasons why the application should be examined on its merits.

A review of the working of the ECtHR has been undertaken and discussion as to the shape of future reform are ongoing. Lord Woolf has commented that 'The problems of the Court derive not only from the rapid increase in the number of member states and the number of citizens able to apply to Strasbourg. It has also undergone a more fundamental change in its nature and purpose' (Woolf, 2005).

The first President of the Court, Luzius Wildhaber, has highlighted the contrast between the Convention system's original purpose as an early warning system, and its current role, whereby it is 'increasingly thought of as being required to offer everyone the individual protection of the law in the last instance'. Although the Court continues to deal with serious human rights questions, this work is now only a fraction of its day-to-day work. 85

per cent of incoming cases are not examined on their merits (either because they are declared inadmissible, or because they are not pursued and are therefore disposed of administratively), and of the admissible applications, only a fraction raise serious human rights questions.

The high percentage of inadmissible cases suggests a lack of congruence between the expectations of those who apply to the Court, and what the Court can actually deliver. There is, in short, a lack of awareness and understanding as to the Court's real purpose and jurisdiction. Reform of the Court may therefore not be enough: thought may also need to be given to how the expectations of 800 million citizens may be achieved.

3.8 Summary of Part B

In Part B you learned more about the ECHR and the procedures of the ECtHR and how protocols have been used to ensure that the ECHR remains a living instrument. Part B also explored the new challenges created by the rapid expansion of HCPs at the end of the last century and the proposals for reform of the ECtHR.

4 Part C: The English courts and human rights

4.1 An overview of the UK perspective

You have looked at the international scene regarding human rights but what of the position in England? You may be wondering: ‘If the common law developed over hundreds of years in this country surely the courts must at some stage have been called upon to consider the issue of human rights?’. As you might expect, the answer to this question is in the affirmative.

However, over the centuries the lack of legal instruments on human rights was itself an inhibition on the development of human rights law in England and Wales. Where there was no legislation which covered a particular point, the judges sought to develop the common law. For some years judges asserted their independence and their right to prevent legislation. By the end of the seventeenth century, however, the supremacy of Parliament as the law-making body had become firmly rooted in the English political and legal system. From this point, where domestic legislation existed, the judiciary usually considered themselves to be bound by it so that they could not decide cases contrary to such laws.

Following the acceptance by the judges of the supremacy of Parliament, there could be no rights considered so fundamental that the judges could ignore clear and unequivocal legislation which removed or curtailed the rights of individuals. Instead the courts developed the view that individuals should be entitled to do as they please, save to the extent that Parliament had removed or restricted that right. In addition, where a public authority was involved (including central or local government), the rights of individuals could only be restricted or curtailed to the extent that legislation or the Crown's prerogative expressly permitted it. This was in contrast to a number of Commonwealth countries which obtained their independence: the relevant legislation embodied a constitution identifying specified human rights and freedoms which were required to be respected. In these cases such rights became enshrined in the law of the independent country.

In recent years, particularly following the enactment of the Human Rights Act 1998, cases have come before the courts where the liberty of the individual has been at issue. The Home Secretary, as the relevant minister of the Crown, is the usual defendant in such cases. As a result of the requirement that the rights of the European Convention on Human Rights are to be applied there have been a number of decisions in the courts which have gone against the Government, to such an extent that judges have been at odds with the particular Home Secretary of the day. However, reference to case law reveals that decisions against the Crown on such issues have not been confined to the post-Human Rights Act 1998 period and the Home Secretary has not always been the defendant.

In Activity 6 you will read about an example of how the UK and the European Convention on Human Rights interact.

Activity 6: The UK and the European Convention on Human Rights

0 hour(s) 25 minutes(s)

Read the transcript for *The UK and the ECHR* linked below. You may wish to read it more than once. Afterwards, please answer the following questions.

1. What English Act of Parliament was being challenged in the proceedings?
2. What articles of the European Convention on Human Rights were being relied upon?
3. What cases was the case of Diane Pretty contrasted with?
4. Do you agree that the law should have allowed Diane Pretty to die as she wished?

Click here to view the transcript. (3 pages, PDF, 0.24 MB).

1. The Suicide Act 1961 was being challenged.
2. In the case of Diane Pretty the applicant relied upon Articles 2, 3, 8, 9 and 14.
3. Her case was contrasted with that of Miss B who had been paralysed when a blood vessel ruptured. Her mind and power of speech remained fully intact. She felt that she had no quality of life and was seeking a decision that would allow her ventilator to be switched off. The case of Miss B required no active intervention by a third party. The case was also contrasted with that of Tony Bland as he was unable to give a reasoned opinion. Diane Pretty was seeking the right to end her life with active assistance and an assurance that her husband would not be prosecuted for assisting with her death. Reference was also made to the case of Brian Blackburn, who served three months in prison prior to his trial. His crime had been to help his wife die. These examples all consider what rights and safeguards are needed when a life is ending, and illustrate some of the challenging matters that the judiciary are required to decide: cases which involve compassion and difficult decisions.
4. This is a matter of your own personal opinion. Some campaigners firmly believe in the right to end life in cases where there is a terminal illness or no quality of life. Others argue that it would be impossible to provide safeguards. Whatever your opinion, think about the evidence you have used to form and support your opinion. How would you use this to convince another individual? How would you present it if you were asked to take part in a debate on the subject?

4.2 Effect of the ECHR on English law prior to the Human Rights Act 1998

The Human Rights Act 1998 (HRA) received the Royal Assent on 9 November 1998, and the main provisions were brought into effect on 2 October 2000. However, the UK had by then been a signatory to and had ratified the ECHR for nearly fifty years. What was the effect, if any, of the Convention on UK domestic law? We have already noted the supremacy of Parliament as the main law-making body in the UK. Under English law international treaties do not become part of domestic law unless and until some legislative

vehicle so provides. Thus, in the case of the EU, the European Communities Act 1972 makes provision in Section 2(1) for:

> All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties and all such remedies and procedures from time to time provided for by or under the Treaties as in accordance with the Treaties are without further enactment to be given legal effect or used in the UK shall be recognised and available in law, and may be enforced, allowed and followed accordingly.

In the case of the ECHR, there was no such provision until the HRA was enacted and brought into force. Did this mean that the European Convention on Human Rights had no effect in the UK? There is no doubt that the English courts were unable to enforce the Convention provisions as such. However, judges did make use of the Convention rights in a number of ways even prior to the HRA.

- First, since the UK government had signed and ratified the European Convention on Human Rights, the courts took the view that the terms of the Convention and the Strasbourg jurisprudence concerning it were important sources of public policy where it was necessary to determine such issues.
- Second, in dealing with difficulties of interpretation of a statute enacted by Parliament, the courts might take account of the Convention and the jurisprudence upon it to help resolve any ambiguity in the statute.
- Third, where there was an absence of statutory provision, the courts could take account of the Convention and the jurisprudence to help develop the common law where it was uncertain or absent.

Furthermore in the period following enactment of the HRA but before its implementation, the courts in a number of instances referred to the European Convention on Human Rights and the jurisprudence in coming to decisions where, post implementation, the rights under the Convention would be engaged. Except in these limited cases, the laws enacted by Parliament were considered supreme and binding upon the judges.

You should now work through Activity 7.

Activity 7: The Convention and the UK

0 hour(s) 50 minutes(s)

Please read Reading 5: ‘The Convention and the United Kingdom’ and make your own notes on the following points.

1. The arguments for and against the incorporation of the European Convention on Human Rights into UK law.
2. The constitutional significance of the Act.
3. The margin of appreciation.

Click here to view the reading.

This reading introduces new material. Taking notes and summarising material concisely is a valuable skill – you may wish to look through the reading briefly first to get some idea of what it covers before reading it in depth to identify the key points and then make your own notes.

These are some of the main points you should have noted:

1 Arguments for and against incorporation:

For

- the increasing number of infringements found against the UK;
- cost and delay of taking a case to Strasbourg;
- fully incorporate the rights into UK law;
- British judges could contribute to the jurisprudence of the convention;
- UK courts would have to have regard to the convention when applying domestic law;
- the ability to challenge public bodies.

Against

- the law of the UK adequately protected its citizens;
- the extent to which rights would apply in the colonies (this argument diminished as the colonies gained independence);
- it would challenge UK sovereignty by giving an international court the final say.

2 The constitutional significance of the Act:

- HRA preserves parliamentary sovereignty;
- the courts cannot declare legislation as having no effect, they can make declarations of incompatibility;
- it does not allow judges to overrule Parliament;
- questions of human rights can involve political questions and these may not be appropriate for judicial decision making;
- the Act is constitutionally significant but is not a new constitution.

3 The margin of appreciation:

- important concept;
- allows for different states taking different approaches to rights;
- allows for cultural and historical differences;
- national courts may be best placed to make decisions on their own societies;
- has to be a genuine difference of opinions;
- allows court to develop its ideas as societies across Europe change;
- ensures the European Convention on Human Rights is a living instrument;
- not applicable in a national court.

In Activity 7 you were asked to consider the arguments for and against the incorporation of the ECHR into UK law. In Activity 8 you will listen to a discussion on the Human Rights Act between speakers who hold opposing views. By answering the questions in the activity, you will gain experience of writing notes from a verbal discussion, which is a different source of material.

Activity 8: The Human Rights Act

0 hour(s) 35 minutes(s)

Listen to the audio discussion on the Human Rights Act below. You may wish to listen to the discussion twice before answering the following questions.

1. What opinions were expressed at the beginning of the discussion on the implementation of the Human Rights Act?
2. What three branches of government were described as 'working in partnership?
3. Why was the membership of the judiciary of the European Court of Human Rights called into question?
4. What changes were felt to have been made to traditional constitutional arrangements?
5. How would you go about finding out more information about the background of the speakers?

Click to listen to the audio clip. (9 minutes).

Audio content is not available in this format.
Activity 8: The Human Rights Act

1. It was suggested that the Human Rights Act binds the UK ever closer to Europe. In addition, unelected judges were being given powers to question Parliament, a democratically elected body. It was also argued that a compromise had been reached, as judges would not be able to overturn legislation but were limited to making a declaration of incompatibility.
2. The three branches of government identified were the judiciary, who have a responsibility for interpreting the law; Parliament, who have responsibility for making the law; and the Government, who are responsible for introducing new laws.
3. The membership of the European Court of Human Rights was called into question because of the background and previous work experiences of some of the appointed members of the judiciary. The Court sat in judgment on nation states and individual citizens, and the role of the judiciary was an extremely important one.
4. It was suggested that the traditional constitutional arrangements of the UK had been altered as powers had been given to an international court. The English judiciary, who were unelected, now had the power to question legislation created by the democratically elected body (i.e. Parliament). Power was being displaced to the English judiciary who were also officers of the state.
5. The discussion was chaired by Clive Anderson, and the speakers you heard were Lord Lester and John Laughland. The slide accompanying the audio gave details of their background. One way to find further information on their backgrounds and work experiences, and for any articles or opinions they may have previously published, is to search the internet.

This discussion illustrates that whilst there may be a general acceptance of human rights, agreement over who should have the final say or be the guardians of such rights is not as easy to obtain.

Activity 9 will help you reflect on your studies of the HRA, and Activity 10 will allow you to consider how successful the Act is.

Activity 9: The Human Rights Act and its effect

0 hour(s) 30 minutes(s)

Please read Reading 6: 'The Human Rights Act: what it means for you', linked below, and make some notes. It provides a summary of the Act and will consolidate your studies in this unit.

Click here to view the reading.

Please note: This leaflet is published by the Legal Services Commission. It is written in association with Liberty. The leaflets are regularly updated, but the law may have changed since this was printed, so information may be incorrect or out of date. The most up-to-date version of the leaflet can be found at: Community Legal Service.

No Comment has been provided for this activity as it serves to consolidate your studies.

Activity 10: The HRA – a success story?

0 hour(s) 15 minutes(s)

Please read Reading 7: 'Happy birthday human rights', linked below. As you read, make notes on how successful you feel the HRA has been.

Click here to view the reading.

Whether you feel the HRA has been successful is a matter of personal opinion and you may have been influenced by what you have read in the media and elsewhere. One of the documents you were asked to read provides a consolidated summary of the HRA, the other describes areas where the HRA has had an impact.

4.3 Summary of Part C

In Part C you explored the relationship between UK law and human rights. You learnt about the historical approaches taken to rights in the UK, that individuals could do as they please unless there was a law restricting or preventing that conduct. The UK had been a signatory to the ECHR for many years before passing the Human Rights Act. Through activities you explored the debate on incorporation of the ECHR and its perceived effect.

Conclusion

This free course provided an introduction to studying Law. It took you through a series of exercises designed to develop your approach to study and learning at a distance and helped to improve your confidence as an independent learner.

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Box 3: based on The European Court of Human Rights: frequently asked questions on their website, http://www.echr.coe.int [accessed 2008]

Reading 5: Hofman, D. and Rowe, J. (2003) 'Human Rights in the UK: A general introduction to the Human Rights Act 1998', London, Pearson. Pearson Education Limited 2003;

Reading 6: Community Legal Service Direct, 'The Human Rights Act: what it means for you', September 2006. This leaflet is published by the Legal Services Commission. It is written in association with Liberty. The leaflets are regularly updated, but the law may have changed since this was printed, so information may be incorrect or out of date. The most up-to-date version of the leaflet can be found at: Community Legal Service.

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