

New publication recommends the UK withdraws from the European Convention on human rights

Leading specialist in European laws, Martin Howe KC, has published the case for leaving the European Convention on human rights.

I have not myself argued this case, and have sought to get the government to overcome the potential difficulties of the way the Court interprets and widens the original convention in the vexed case of illegal migration. There I and other MPs have proposed amendments to legislation where Parliament needs to assert itself against possible ECHR overturns of policy. The wish to end the small boats trade and to send the illegals somewhere else safe for consideration of their cases is one such area. There is an argument going on in government about using such a domestic legal override given the importance of the issue, with the former Home Secretary and the current Migration Minister thinking there does need to be a Notwithstanding clause to ensure the will of Parliament is upheld in the event of someone trying to appeal to a foreign court or under an international convention.

Those of us who favour a limited exemption for a clearly required policy like stopping the small boats can point to Parliament's success in resisting votes for prisoners. The ECHR told us to grant them and the UK parliament voted not to. We stayed in the Convention. Other countries with democracies and decent human rights have disagreed and not accepted verdicts as well and stayed in the overall scheme

The UK was one of the original drafters and instigators of the Convention on human rights. It was aimed at general state policy, to foster more democracies and countries with a rule of law after the horror of Nazi and communist tyrannies in war torn Europe. It was only later the ECHR started to widen the remit to give individuals rights against governments justiciable in that court, instead of it staying at a high level assessment of a country's democracy and civil rights achieved through national democratic process.

Martin Howe argues that a true Parliamentary democracy needs a sovereign people who delegate power between elections to a sovereign Parliament. What the people and Parliament want should be good law and upheld as such. This cannot be true if there is an international external body that can effectively strike down domestic law. He is happy to rely on the UK Parliament and elections to determine our civil liberties and rights, and thinks there can be no guarantee that we can stop the small boats or carry through other desirable policies all the time we stay in the Convention which has changed and grown in power a lot since we first helped invent it.

I would be interested to hear your thoughts on these two different approaches.