



Human rights and policy wrongs

by Ian Bond

David Maxwell Fyfe, first Earl of Kilmuir, should be a hero of die-hard British Tories. Instead, his most important work is a target of their misguided hostility.

A tough Conservative Home Secretary and Lord Chancellor, Fyfe strongly supported the death penalty. At the Nuremberg war crimes trials, he conducted a devastating cross-examination of Hermann Göring in relation to the murder of RAF prisoners of war. But Fyfe's most enduring legacy is the European Convention on Human Rights (ECHR), of which he was the main drafter.

The ECHR is the only legally enforceable set of international human rights norms. Only in the 47 countries that have acceded to the ECHR – every European state except Belarus – can citizens seek a legal remedy from an international tribunal if they have not got satisfaction from domestic courts.

The ECHR and the Strasbourg-based European Court of Human Rights that enforces it have become hate-objects in the UK for a variety of reasons. From ignorance or by intention, eurosceptic politicians often conflate the Strasbourg Court with the European Court of Justice, tarring it with Britain's general suspicion of the European Union, though it is entirely unrelated to the EU. Some MPs and judges object on principle to an international body which can limit parliament's absolute sovereignty. Some of its decisions arouse populist frenzy – Prime

Minister David Cameron said that the idea of giving prisoners the vote, as directed by the Court in 2005 (but still not implemented by the UK), made him "physically ill".

In reality, neither the ECHR nor the Court threaten the British way of life. Relatively few cases from the UK reach Strasbourg: in 2013, the Court started to examine around 2,500 against the UK, while Russia faced 36,000 cases and Ukraine 26,000. In 2013, the Court delivered 13 judgements involving the UK and found against the government in eight – a better success rate than most countries in Europe. For Russia, the corresponding figures were 129 and 119; for Ukraine, 69 and 65. And the Court tends to give governments significant room to interpret its judgements: its 2005 decision was not that all prisoners should have the right to vote, only that a blanket ban was a violation of rights.

For UK citizens, the ECHR and the Court are the ultimate check on what another Conservative Lord Chancellor, Lord Hailsham, called "elective dictatorship" – the power of the government to pass any law it chooses, however illiberal or repressive, if it can find a parliamentary majority for it.

But the ECHR is more important for the British government than it seems to realise. The ECHR is woven into the Good Friday Agreement which brought the conflict in Northern Ireland to an end: the British government undertook to “complete incorporation into Northern Ireland law of the European Convention on Human Rights, with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency” with the ECHR. It is hard to see how the ECHR could still apply in Northern Ireland if the UK were no longer a party to it; yet it is central to creating confidence that the minority community in Northern Ireland will not in future suffer the discrimination it faced in the past.

Almost as damaging would be the effect of withdrawal from the ECHR on British foreign policy objectives, particularly in Eastern Europe and the Balkans, where ineffective courts and corrupt governments hinder political and economic progress. The Council of Europe Commissioner for Human Rights, Nils Muižnieks, said recently that the UK debate on the ECHR and the Court was having a “corrosive effect” elsewhere in Europe. If the UK declares itself not bound by Court judgements, then why should Russia not follow suit? A topical example of what this would mean: the Court has found that countries have a duty to protect human rights in territories they control militarily, which gives Ukrainian citizens in Crimea a chance to seek redress for crimes committed under Russian occupation.

Whether leaving the ECHR would call into question the UK’s membership of the EU has been hotly debated by lawyers. ECHR accession is a condition for applicant states, but continued membership is not an explicit requirement for existing member-states. The EU itself, however, plans to accede to the ECHR, which would leave the UK bound by the ECHR in any area relating to EU law, regardless of whether London had withdrawn from the Convention.

“*The European Convention on Human Rights is more important for the British government than it seems to realise.*”

Britain’s Justice Secretary, Chris Grayling, and Home Secretary, Theresa May, both want the Conservative party to go into the 2015 general election on a platform of curtailing the power of the European Court of Human Rights, including withdrawing from the Convention if that is the only way to achieve their goal. They should look at the bigger picture before aligning the UK with Belarus. The ECHR may occasionally inconvenience the UK, but in every European state it is a vital safeguard against arbitrary rule.

Ian Bond
 Director of foreign policy, CER

CER in the press

Bloomberg

14th March 2014
 “A lot depends on how firm the signaling is to Putin at this stage,” said Ian Bond of the CER. “There is a risk he may think he can take more bits out of Ukraine.”

The Guardian

5th March 2014
 In a speech to the CER today, in which he declared that pro-Europeans were best placed to modernise the EU, the Deputy Prime Minister Nick Clegg said Cameron would only achieve a “little tweak here, a little tweak there”.

The Telegraph

18th February 2014
 “If poorly managed, Cypriot gas could harden political divisions. Ankara does not recognise the government in Nicosia and has threatened military force if Cyprus allows drilling in the disputed maritime zone,” said Rem Korteweg of the CER.

BBC News

17th February 2014
 Stephen Tindale of the CER said the European Citizens’ Initiative was a useful way to put an issue on the EU’s agenda. “It requires the Commission to meet groups, consider the issue and

give a response, but it won’t necessarily lead to a change in policy”.

Financial Times

13th February 2014
 John Springford of the CER says in a 2013 paper on EU immigration that the UK looks to be following the US example, where skilled natives are more likely to work as managers and executives while skilled immigrants are more likely to work as scientists, engineers and statisticians.

Reuters

31st January 2014
 “We cannot afford to be

complacent,” Benoit Coeuré said in a speech to the CER. “Debt levels and unemployment are high and unevenly distributed, and the nascent recovery remains weak and uneven”.

Financial Times

29th January 2014
 “My own feeling is that the strategy of a referendum that he announced 12 months ago is now almost impossible to achieve,” says Charles Grant, director of the CER. Mr Grant argues that in his quest to win re-election and to vanquish the threat of Ukip, Mr Cameron is simply making too many enemies.