The Court and the Convention System

Introduction

This year marks the 75th anniversary of the European Convention of Human Rights (ECHR) - a landmark treaty which, to paraphrase a recent speech by the UK Justice Secretary, ensures "that freedom, dignity and the rule of law are not just aspirations, but guarantees". The body tasked with overseeing whether states are complying with their ECHR obligations is called the European Court of Human Rights (the Court).

With populist forces amping up the temperature over the Convention and migration, the Court's 75th birthday is likely to be surrounded by unneeded controversy. Much of this controversy stems from the fact that the public is kept in the dark about how the Court actually functions.

In the current blog, we offer readers a brief "walkthrough" of what happens when an application is submitted to the Court and the Court finds that a violation of the Convention. In doing so, we hope to combat common misconceptions about this vital institution. As will be explained below, the Convention system not only leaves a significant deal of discretion in the hands of national governments but also acts as a motor for positive change.

The Court and Convention in a nutshell

As we noted in our last blog, the ECHR protects civil and political rights. Among other things, it allows us to express our ideas and religious beliefs freely without undue interference; protects us from being tortured, ill-treated or kept in servitude; and ensures protection for our home lives, correspondence and private spheres.

As many will be aware, the Convention has been "brought home" thanks to the Human Rights Act 1998. This Act means that anyone whose rights have been breached by the state can take the UK Government to court (see this excellent explainer from EachOther).

However, the ECHR is about far more than suing the government. Before people even arrive at that stage, Parliament and Government must design laws and policies in ways that protect the public's rights. This might mean enacting legislation that deters certain offences; ensuring that the public have a remedy if denied social benefits; or allowing the public to access a range of opinion and comment on public affairs.

However, neither the courts nor the Government can get it right 100% of the time. The Court based in Strasbourg is there to act as a "fail-safe": if people fail to obtain redress

for human rights violations in their own domestic system, they can ask the Strasbourg-court as a last resort to determine whether a violation has occurred.

I've sent an application to the Court: now what?

For all the talk of the Court interfering with state-sovereignty, it is in fact quite difficult for an applicant to get a panel of judges to even hear their case, let alone conclude that a violation has occurred.

The Court carefully screens all applications it receives. A case will be dismissed by the Court if:

- the applicant has not yet exhausted domestic court procedures;
- It was lodged over four months after the last domestic court decision;
- the applicant did not raise their human rights before the domestic courts;
- it is so clear from the case file that no violation has occurred, the case should not proceed any further.

If any of the above apply, the case will be allocated to a "single-judge" and declared "inadmissible". Instead of receiving a detailed, reasoned judgment, the applicant receives a succinct letter stating why their case was deemed inadmissible. As can be imagined, this system has attracted significant controversy for putting efficiency over and above the due process rights of applicants.

A significant bulk of the Court's caseload is declared inadmissible. In 2024, 60,350 applications were lodged with the ECtHR. 22, 488 of these – that is over 60% - were dismissed as inadmissible. In 2024, 325 of the 478 cases the Court received from British applicants were declared inadmissible.

The Court has declared my case admissible: what happens next?

If the case is not clearly inadmissible and raises complex points of law, it will be transferred to a panel of judges and "communicated" to the Government. In other words, the government receives a short summary of the facts of the case and is asked specific legal questions.

The Government must then lodge detailed written arguments; after this, the applicants are allowed to respond. However, the Court also invites third parties to submit written comments. This allows NGOs to intervene and to offering further insights into government policy or the broader issues arising from the case. For instance, Article 19 intervened in the case of Big Brother Watch, providing details about the UK's mass surveillance regime.

Some of the most recent cases communicated against the UK involve:

- the investigation into the infamous stabbing of an Ivorian national at the Park Hotel in Glasgow;

- alleged delays in reuniting an unaccompanied minor based in Calais with his brother in the UK;
- An NHS worker being forced to disclose extremely minor convictions dating back to her teenage years;
- An environmental protester being forced to pay extortionate costs for contempt of court.

And if the Court finds a violation?

For starters, it's worth stressing that the Court has only issued a very tiny number of adverse rulings against the UK since 1959.

Nevertheless, when the Court does find a violation, the state is duty-bound to implement the judgment. The Court rarely tells states what they must do to improve human rights practices. Instead, it is for the state itself, based on an assessment of the judgment, to decide how to put matters right.

The final judgment is transmitted to the CoE's highest decision-making body, the Committee of Ministers (CM). Composed of representatives from the 46 Member States, the CM meets four times a year to review cases that have not yet been executed.

The state in violation of the Convention submits an "action plan" explaining how it plans to remedy the situation. The CM will then debate on whether these measures are sufficient to comply with the Court's rulings. If the CM is satisfied with what the state has proposed, it can "close" supervision of the case. If the CM deems the measures insufficient, it can resolve to re-examine the case at subsequent meetings or propose more stringent measures. However, since the CM lacks the power to impose hard sanctions, such measures are most likely to be of symbolic value.

When implementing a judgment, states must not only improve the applicant's specific circumstances (e.g. by offering compensation). They must also implement wider reforms to ensure the same violations doesn't happen to other applicants in the future. This usually means amending legislation or carrying-out widespread awareness raising measures.

Court judgments have changed the UK for the better. Thanks to the Court, the UK has had to (Among many many other things!):

- scrap legislation criminalising same-sex relationship;
- Improve the procedural guarantees of Roma/gypsy travellers facing eviction;
- Tighten up its rules on stop and search; and
- Introduce better guidance for the detention of legally incapacitated persons.

When a case is being examined by the CM, NGOs can submit written submissions known as Rule 9 submissions. This allows civil society groups to highlight

inadequacies in the government's action plan, provide statistics or report on systemic human rights violations.

As part of the CM's examination of *V.C.L. AND A.N.* – a case concerning the UK's failure to protect two child trafficking victims from prosecution for acts they were forced to commit - the Scottish Refugee Council submitted evidence regarding the Lord Advocate's instructions about the prosecution of suspected human trafficking victims in Scotland. In its latest decision on *VCL*, the CM approved the UK's updated guidelines on protecting trafficking victims from prosecution but regretted that only limited information about their implementation in practice had been provided.