

ECHR Moot Brief #2: The workings of the Human Rights Act 1998

The rights provided for in the Act are guaranteed to individuals by the state, primarily to protect against the abuse of power by the state. Therefore it flows logically from this that it is unlawful for a “public authority” to act in a manner which is contrary to the Convention. It is also axiomatic that if a private person acts in a manner that infringes on someone else’s convention rights, it would not be possible to sue the person for infringement. This is the concept of horizontal effect (between individuals) and vertical effect (between the state and individuals)—**the Act only encompasses vertical effect.**

- Note here that there is quite a lot of case law on what counts as a public authority and what does not. *Article 6* states that “**public authorities**” includes “courts and tribunals” and “any person certain of whose functions are of a public nature”. This is a controversial issue (see Professors Dawn Oliver and Rodney Austin’s positions on this in the case of *YL v Birmingham City Council*)

In order to bring a claim under the HRA, the claimant has to have locus standi, i.e. he/she should have a standing.

Q. Who are those people capable of bringing that claim?

- Refer to section 7 of the Human Rights Act 1998
- Accordingly, the claimant has to have “sufficient interest in relation to the unlawful act only if he is, or would be a victim of the act”.
- If the court finds that the public authority has actually violated the claimant’s convention rights, then the court can award damages.

Q. How do courts deal with legislation that is incompatible with Convention rights? (because if a public authority is found guilty of violating such rights, but is authorised to do so under a specific statute or Act of Parliament, that authority cannot be held liable).

- Section 3 of the HRA provides that courts are required as far as possible (again there is controversy here as to how far courts should, and are willing, to go) to interpret legislation in a way that is compatible with convention rights.
- Should such an interpretation of the offending legislation not be possible under Section 3, courts are then authorised, according to Section 4 of the HRA, to make a **declaration of incompatibility**. The doctrine of parliamentary sovereignty means that such a declaration will not have any real impact on the legislation (in terms of invalidating it), but Parliament then has a fast-track option to amend it such that the incompatibility is rectified.

All possible domestic remedies must be exhausted before a case can be taken to The European Court of Human Rights (ECtHR)