

Examining the Proposed British Bill of Rights: Tensions and Implications in the Intersection of Domestic and International Law

Introduction:

A critical analysis of the government's proposed British Bill of Rights, focusing on its potential impact on human rights protections and its interplay with international law.

Case Spotlight:

The landmark case of *Ezeh and Connors v the United Kingdom* serves as a crucial reference point when discussing the proposed 'permission stage'. In this case, the Strasbourg Court interpreted 'significant disadvantage' under Article 35(3)(b) of the ECHR as implying a minimum level of severity, measured in terms of factors such as the intensity and duration of suffering or harm. This interpretation is pertinent when contemplating the proposed requirement for claimants to prove they've suffered a 'significant disadvantage'. The case underscores concerns about the potential for subjective interpretations of this term, which could lead to inconsistencies in legal decisions and may inadvertently raise the bar for human rights claimants, potentially limiting access to justice.

Case Spotlight:

The pivotal case of *R (Miller) v Secretary of State for Exiting the EU (2017)* illuminates the central role of judicial review in safeguarding the balance of powers and the protection of individual rights. In this case, the UK Supreme Court upheld the High Court's decision that the government could not initiate withdrawal from the European Union without an act of Parliament. This ruling emphasizes the importance of judicial oversight in ensuring that public authorities respect individual rights and act within their legal powers. As the British Bill of Rights seeks to reframe the balance between individual rights and the public interest, the Miller case serves as a vital reminder of the need for robust judicial review as a check on governmental power, thereby safeguarding the rule of law and the proper functioning of democracy.

Case Spotlight:

Saadi v Italy (2008): This case sets a crucial precedent that human rights are inviolable regardless of an individual's behaviour, even in contexts related to national security. It poses a challenge to the government's proposal of considering the claimant's behaviour in human rights damages claims, thus raising a fundamental question about the universality and inviolability of human rights. This landmark judgement thereby highlights the potential tension between the proposed British Bill of Rights and established international human rights jurisprudence.

Key Themes

Permission Stage and Access to Justice

The proposal of a permission stage for human rights claims, requiring claimants to prove a 'significant disadvantage', is a matter of concern. It might limit access to justice for certain individuals, and the concept of 'significant disadvantage' is open to subjective interpretation and potential legal inconsistencies. Moreover, this may deter individuals from bringing forth genuine claims, creating a potential 'chilling effect'.

Consideration of the Claimant's Behaviour

The consideration of a claimant's behaviour in human rights damages claims can potentially undermine the universal and inviolable nature of human rights. This shift may blur the distinction between civil and human rights, and inappropriately penalise victims of human rights abuses, with the potential for bias and discrimination.

Interaction with the Strasbourg Court

The attempt to limit the Strasbourg Court's influence in UK jurisprudence challenges the complementary nature of the two jurisdictions, possibly disrupting the dialogue between them. This could isolate the UK from the broader European human rights framework and raise concerns about the protection of human rights within the UK.

Balancing Public Interest and Individual Rights

The Bill's reorientation towards public safety risks overemphasising public protection at the expense of individual rights. While public safety is important, a balanced approach is crucial to respect human rights. Judicial review plays an essential role in this balance, acting as a check on governmental power.

Devolution Concerns

The interplay between the proposed Bill of Rights and devolved settlements in Scotland, Wales, and Northern Ireland presents unique challenges. Unilateral changes to human rights reform could potentially infringe upon devolution agreements and destabilise peace processes, such as in Northern Ireland.

Rejection of Title Change

The decision to retain the 'Bill of Rights' title signals a desire to emphasise a uniquely 'British' conceptualisation of human rights. This framing raises questions about the UK's relationship with international legal norms, reinforcing the dualistic interaction with them.

Conclusion:

The British Bill of Rights proposes a significant shift in the UK's approach to human rights. It raises complex debates about access to justice, the balance of power, the dualistic nature of UK-EU human rights relationship, and the potential implications for devolution. Critically examining this proposed legislation underlines the necessity to respect the foundational principles of human rights law and consider the unique legal and political context of the UK.

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