

Assignment 1

Q. Explain 3 important cases that have decided by the European Court of Human Rights (ECHR) & outline their impact on domestic legislation in the United Kingdom.

The Human Rights Act (1998) was introduced as part of the United Kingdom's (UK) legislation back on 2nd October 2000. The Act empowers UK courts to make judgements on cases without the need to go to the European Court in Strasbourg, (only as a last resort or appeal). While enabling them to remedy for breach of a Convention right.

[United Kingdom Parliament](#) *'An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.'* Wikipedia (July 08).

1) In the James Bulger murder case (1993) tested the then Home Secretary Michael Howard, of who had the right to have the final say on the length of sentences and whether it infringed the perpetrators' right to a fair trial. James Bulger was a two-year-old child who was killed by two ten-year-old boys, Jon Venables and Robert Thomson on the sidelines of a railway station. The killing caused immense public outcry and grief and the boys were both given sentences of ten years each.

This was seen as too lenient and a petition by public & national newspapers to increase their sentences to the Home Secretary became successful (1995). The Home Secretary thus increased the killers' sentences to 15 years. Unfortunately in 1997, the decision that Howard made was seen to be unlawful and the Court of Appeal ruled that the Home Secretary can not set the terms of life sentences for those under 18 years of age. The boys were released in June 2001 after their ten years in prison.

In 2003, this example the principle of whether an Article of the Convention had been violated is clear as the boy's human rights had been breached. The direct impact on UK legislation was ruled that no one person that of a politician will no longer decide on the length of a prisoner's conviction.

'The 2003 Criminal Justice Act removed much of the power to set sentences previously held by the Home Secretary'. (Wikipedia 2008).

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2) In the case of *Cossey v. UK*, the UK Government referred to the ECHR in 1989 as to whether the applicants rights were breached by the member state (UK) under articles 8* and 12* of the convention (*References). The facts are that Miss Cossey was born a man in 1953 who was born with male genitalia but was feminine in the inside. Later in life she underwent surgery and hormone replacement therapy to change her appearance. She changed her name by deed poll received medical documentation in support of her change and started living as a life fully as a female. It wasn't until she decided to marry that it became an issue.

The Registrar General informed Miss Cossey that if she entered the marriage it would be void due to English law (only a man and a woman may be married) and that a change in the law would be required for the marriage to be valid. Miss Cossey's complaint was upheld by the ECHR as the fact that under English law she was not recognised as a woman even though she had documentation to prove otherwise. In accordance with both Articles the Court found that her rights were violated and the result on the UK legislation was challenged under Articles 8 and 12 and in favour of Miss Cossey.

The impact on UK law proved a landmark for this type of case and provided a foundation in which all things became clearer and positive for such persons of transsexual-gender nature. When there is a conflict between national law and the Convention rights, the ECHR shall rule the Member State as contrary to its own law and is seen to breach the Convention.

3. The case *A v. UK* (1998), where parental beating breached the Convention. The ECHR ordered the UK government to compensate a young boy who was abused (caned) by his stepfather. It was the first case of its nature to be brought forward to the European Courts where the UK courts had failed in their obligation in protecting the child under Article 3 '*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*'. The courts declared that the beating of a youngster by their adoptive parent constituted '*inhuman or degrading punishment*', (ECHR) and the UK must adhere to '*effective deterrence*' and '*personal integrity*' (ECHR) in order to protect children or vulnerable persons.

It highlighted that UK domestic law did not provide adequate protection and failed in its obligation to the child. Therefore the ECHR insured that the positive step to eliminate violence against children in ordering the UK to pay £10,000 and legal costs to the boy and has since been ratified by the UK courts.

Conclusion

Overall the UK Courts have to interpret Convention rights whilst taking into the account decisions made by the ECHR and legislation. The courts must interpret legislation in a compatibility way as to give effect of the Convention rights. Even where the impact on domestic legislation challenges UK law to the extent where emphasis a new direction through cases that are brought forward and sets out a new landmark for that particular part of law and society.