

The Human Rights Act

The Human Rights Act 1998 has important ramifications for all aspects of police work. Police Investigation, the conduct of prosecution and the presentation of evidence in court, have all conflicted with Human Rights.

In the context of criminal cases the main areas of Human Rights include:

- Right to a fair trial (Article 6 of the Convention)
- Right to privacy (Article 8 of the Convention)
- Right to an effective remedy (Article 13 of the Convention)

The courts are required to 'read and give effect' to primary legislation in a way which is compatible with the Convention Rights 'so far as possible to do so'. (S3 (1))

Examination of the effects of the Convention on the Criminal Justice System reveals the problems, of which some will be touched upon in this discussion.

Police surveillance has already fallen foul of Article 8 in a number of cases.

In the cases of *Kahn v United Kingdom* 2000, and the similar case of *P.G. and J.H. v United Kingdom* 2001 (*The Times*, 19th October 2001), it was held that there had been a breach of Article 8 and Article 13, but not a violation of Article 6. It was held that the applicant's right to respect for private and family life, as guaranteed by Article 8 of the Convention, had been violated. This is simply because the domestic law did not regulate the use of covert listening devices at the time of the applicants conviction. The European Court did however find that there had been no violation of Article 6, that the applicant did have a fair trial. I cannot help but think that these two judgements contradict each other. If the evidence violated Article 8 and the case was entirely based upon the weight of this evidence, then how could it have been a fair trial?

In the case of *Kahn v U.K.* Lord Nolan stated to the House of Lords:

'The sole cause of this case coming to your Lordships House is the lack of a statutory system regulating the use of surveillance devices by the police. The absence of such systems is astonishing, the more so in view of the statutory framework which has governed the use of such devices by the Security Service since 1989, and the interception of communications by the police as well as by other agencies since 1985.'

It would appear that over the years, the police have had an ad hoc system regarding surveillance techniques and therefore the European Court has highlighted fundamental flaws by way of the Convention, in relation to the procedures that have been undertaken by the police regarding the use of surveillance.

The work of the security services has been carried out legally under the umbrella of legislation, therefore allowing surveillance of suspects. The police do not appear to have carried out their work legally, therefore the European Court is setting examples in cases like the above, the main principle being that a body cannot carry out illegal acts in order to obtain a legal solution (e.g. a conviction). However, the Regulation of Investigatory Powers Act 2000 provides the police with guidelines on the subject of

surveillance, so there should not be a problem now. The cases that the European Court is hearing are convictions before this Act was processed.

In the case of *Condron and Another v United Kingdom* 2000 it was held that there had been a violation of Article 6 of the Convention. This was because the judge in the case had not properly directed the jury on the issue of the defendant's silence during a police interview; he had said that silence was negative. He had said this with reference to section 34 of the Criminal Justice and Public Order Act 1994.

The first point that I would like to make is the fact that the defendants were withdrawing from heroin which was the reason that their solicitor had advised them to remain silent. Most crimes are drug related, this could open floodgates in the fact that they remained silent because they were 'drugged up'; every criminal could abuse this right. This could be the main reason for the judge to have directed the jury in this way, to prevent the floodgates. This would also put pressure on the legal advisor, simply because if the silent interview is conducted on the advice of the solicitor, then it can be brought up and used against the defence. However, if I were a juror I would not think that keeping silent was positive, and I would agree in this case that the judge should not have imposed his view on the jury.

In the case of *Atlan v United Kingdom* it was held by the European Court, that there had been a violation of Article 6 of the Convention because the prosecution had failed to let the trial judge rule on the question of the disclosure of evidence. The prosecution simply should have followed procedures; the judge decides whether or not the evidence attracts public interest immunity, as in the case of *Conway v Rimmer*. If the procedure were not followed correctly then we would be having similar convictions and unfair trials as in the seventies and eighties, for example, the *Gilford Four*, and the early nineties as in the case of *Edwards v United Kingdom* (1992).

In the case of entrapment, there is no defence for this in England and Wales. However, the Convention has applied Article 6 to prevent this, as in the case of *Texiera de Castro v Portugal* (1998). 'Even the obvious public interest in fighting drug-trafficking could not justify using evidence obtained as a result of police entrapment.' I think that this is right but only depending on the circumstances. I feel that if a drug-trafficker is a well known 'heroin dealer' and the last resort for the police to stop him is by 'agent provocateur', then I think that this should be justified.

By joining the European Union, the government took on board the laws, provision, directives etc of the Community. I think that the courts will go as far as they have to in order to abide and interpret these laws into ours. My view is that to have another body of law keeping an eye so to speak, on ours is good. There is less chance of unfair trials, policing and government legislation, and more chance of fair and properly followed procedures within the law and order of this country.

