

Human Rights Act Reporting in the Media: corrections and clarifications

Wanted posters

"Police can't put up 'Wanted' posters of dangerous criminals on the run because of their human rights"

Since 2007 there have been reports that police are unable to release photographs of dangerous criminals on the run because this would breach their human rights. However, the Human Rights Act (HRA) itself protects the right to life and imposes an obligation on the State to protect people from serious criminal attack. In some circumstances the Government may actually be under a duty under human rights law to publicise photographs of dangerous convicted criminals if this would protect others. The right to privacy can be limited for the protection and detection of crime as long as it is necessary and proportionate to do so – seeking to locate dangerous criminals and warn the public is certainly not a breach of human rights law.
(Liberty website)

The Derbyshire example

Dominic Grieve, then Shadow Justice Secretary, claimed the Derbyshire police force had refused to release pictures of two fugitive murderers because it could have impinged on their human rights.

"How many times have we seen police or probation officers say they can't disclose the identity of a criminal because of his privacy under the Human Rights Act – police in Derbyshire refused to disclose photos of fugitive murderers. That's complete nonsense and we'll end it straight away."
(Grieve at Tory Party Conference, 7 October 2009)

He was referring to the convicted murderers Jason Croft and Michael Nixon, who walked out of Sudbury jail in 2006. Police initially did not release their photographs because they believed both men were not in Derbyshire, and there was no policing purpose to showing their faces.

An official statement released by the Derbyshire force said: "The publicity surrounding the release of the photographs of the absconders from Sudbury prison was based on misreporting. The Derbyshire Constabulary has never refused to release photographs on the grounds of the human rights of the offenders."¹

Deportation and family life

The Human Rights Act is often criticised by the media for preventing the deportation of foreign criminals where it would breach their right to respect for family life (Article 8 HRA). For example, immigration judges ruled in 2010 that to deport a failed Iraqi asylum seeker, Aso Mohammed Ibrahim, would be a breach of his Article 8 rights. Ibrahim had been convicted of failing to stop after an accident in which his car hit and killed a 12-year-old girl. The immigration decision led to several media articles calling for the Human Rights Act to be repealed.
(for example The Sun, 18 December 2010; Express, 8 January 2011)

¹ 'Tories slammed over attack on Derbyshire police during party conference', ThisIsDerbyshire.co.uk, 8 October 2009.

However, such articles often fail to make clear that the right to family life in deportation cases is generally primarily about partners or, more importantly, children. In the case of Ibrahim, there were no moves by the authorities to remove him from the UK at the time of his conviction or release. The immigration judge revealed that had such moves been taken then, it is likely that Ibrahim would have been deported to Iraq. But no such steps were taken, allowing him the time to settle here, marry and father two children, as well as becoming stepfather to two more children. The immigration judge took into account the best interest of the children and the fact that they could not be expected to leave the UK to move and live in Iraq. Were it not for the children, the judge said his view on the matter might have been different.

The cat example

It has been reported in several newspapers that a Bolivian man has been spared deportation on Article 8 grounds (right to respect for family life) because of his pet cat. (for example, The Sun, 9 February 2011; Sunday Telegraph, 12 June 2011; Daily Mail, 17 June 2011)

The Home Secretary also referred to this case in her party conference speech in 2011, saying:

“We all know the stories about the Human Rights Act... The illegal immigrant who cannot be deported because – and I am not making this up – he had pet a cat. This is why I remain of the view that the Human Rights Act needs to go.”²

In fact the immigration judge found that it would be disproportionate on Article 8 grounds to remove this claimant because he had a long-term relationship with a person settled in the UK and they had lived together for four years.³ The reference to the cat was one detail amongst many provided by the couple as evidence of the genuineness of their long-term relationship. The judge also relied on a former Home Office policy⁴ which said that if an individual lived in the UK with a settled spouse for two years or more without enforcement action being taken against them, they were entitled to leave to remain. The Home Office appealed but a senior immigration judge upheld the decision on the basis of the former Home Office policy.⁵ All other factors in the original determination, including ownership of the cat, were deemed “immaterial”.

Learco Chindamo

The decision of the Immigration Tribunal not to deport Chindamo, the 15 year old killer of head master Phillip Lawrence, upon his release from custody, is often cited as an example of a decision under the HRA.

(See for example, the Times 21 August 2007)

Although the HRA was a factor in the case, the Court made it clear that the decision not to deport was not made under the HRA. In fact it was made under the European Union laws on freedom of movement restricting the expulsion of citizens of one member state from another member state. (EHRC Human Rights Inquiry Report, 2009)

² Speech to Conservative Party Conference, Manchester, 4 October 2011.

³ Judge Devittie, Asylum and Immigration Tribunal, October 2008.

⁴ DP3/96.

⁵ Judge Gleeson, Asylum and Immigration Tribunal, 10 December 2008.

Anthony Rice

'Freed to kill . . . because his human rights were held sacred'
(Daily Mail, 11 May 2006)

In November 2004 sex offender Anthony Rice was released from prison on parole after having served 16 years of a life sentence for a violent attempted rape. He had previous convictions for rape and indecent assault. In August 2005 he raped and murdered Naomi Bryant while on release on licence. The following year the Chief Inspector of Probation carried out a review of the Parole Board's decision to release, which concluded that it was a result of a series of mistakes, misjudgements and miscommunications. The review found that the Parole Board's decision that Rice was safe to release gave insufficient weight to the underlying nature of his risk of harm to others. It found that this happened for a number of reasons, including the "major mistake" of failing to look at his previous offending behaviour, in particular that he had offended against children. One of the other factors was that "the people managing this case started to allow its public protection considerations to be undermined by its human rights considerations". Following this it was widely reported that Rice was freed 'because of his human rights'.⁶

The Chief Inspector of Probation later wrote that "it was a huge distortion of our findings when some newspapers said that Rice was released in order to 'meet his human rights'." The Joint Committee on Human Rights has concluded that "there was no clear causal connection between any interpretation or application of the HRA and the death of Naomi Bryant, because Rice was not in fact released 'in order to meet his human rights'".⁷

Originally the Coroner decided not to hold an inquest into Bryant's death after Rice confessed to her murder. Liberty used Article 2 of the Human Rights Act (right to life) to secure an inquest into her death.⁸ The inquest also dispelled the myth that the Human Rights Act was the reason for Rice's release. It found that Bryant was unlawfully killed due to a catalogue of public authority failings. The jury found that errors by the prison, parole board, probation services and other agencies directly contributed to her death.

Dennis Nilsen

"The Human Rights Act 2000 allowed: SERIAL killer Dennis Nilsen to win a case to look at hardcore pornographic magazines in his cell. He successfully argued that existing rules, which allowed him to look at soft porn magazines, infringed his human rights."
(Daily Mail, 21 November 2006)

Nilsen was denied access to the gay art book he requested by the Prison Governor. The legal case he brought fell at the first hurdle when he was refused permission to have his case heard because he could not establish that there was any breach of his human rights. The decision of the Prison Governor stood.
(EHRC Human Rights Inquiry Report, 2009)

⁶ For example, 'Freed to kill...because his human rights were held sacred', Daily Mail, 11 May 2006.

⁷ 'The Human Rights Act: the DCA and Home Office Reviews', Joint Committee on Human Rights, 32nd report of session 2005-06.

⁸ See <http://www.liberty-human-rights.org.uk/media/press/2011/inquest-secured-by-human-rights-act-finds-institutional-.php>

Fast food

“How a suspected car thief...was granted his human right to a KFC bargain bucket and a 2-litre bottle of Pepsi”

(Daily Mail, 7 June 2006)

The HRA does not give any prisoner making a roof top or any similar protest the right to the meal of his choice. The police responded to his refreshment demands as part of their negotiating strategy

(Human Rights Fact and Fiction, Ministry of Justice)

Too much power to judges?

The media often misleadingly report on the power of judges under the HRA and that when a court makes a declaration that legislation is incompatible with a right in the HRA, that is the ‘final say’ on the matter. For example, when the Supreme Court issued a declaration that inclusion on the sex offenders register for life without the opportunity for review was a breach of the HRA, it was reported that “the next Government will have to bring in legislation” to remedy this.

(Independent, 22 April 2010)

In fact, the HRA does not leave the final say with the courts. When a declaration of compatibility is made, it is then for Parliament to choose whether and how to respond.⁹ The courts cannot use the HRA to force Parliament to change the law.

Costs of complying with European Court of Human Rights

A report by the Taxpayers’ Alliance on the cost of complying with the decisions of the European Court of Human Rights has been reported in several newspapers, as costing the UK £42 billion to date.

(for example, ‘Human Rights Laws Cost Britain £42bn’, Daily Mail, 7 December 2010)

In fact, our research shows that the Taxpayers’ Alliance report appears to contain some serious flaws:

- The report asserts that complying with the Court’s judgments costs £2.1 billion a year. However, of the 37 cases listed in the report, in only 7 is evidence provided of a direct link between the judgment and the cost and of how the cost was calculated.
- The assertion that “the growth of a ‘compensation culture’ fostered by the Court costs a further £7.1 billion a year” is allotted to one judgment (about a suicide in prison), whilst the costs cited appear to relate to all compensation claims, not merely those relating to prisons, nor just those that might be linked to the HRA.

(Human Rights Futures Project research)

⁹ *R v Shayler* [2002] 2 WLR 754 at para 53.

Numbers of human rights cases

“Courts are dealing with at least 10 significant human rights battles every week since controversial new laws were introduced a decade ago, a study has found.”
(‘Human rights cases filling courtrooms’, Daily Telegraph, 14 February 2011)

The statistics on human rights cases, as quoted above, can be highly misleading without further clarification. The article states that 5,107 human rights cases have been reported on the legal newswires in the ten years since the Human Rights Act came into force. But the article doesn’t explain that the vast majority of these cases would have been taken anyway, with human rights being used as an additional argument in the case. The statistic also includes all such cases, whether they were successful or not.
(Human Rights Futures Project research)

Sex offenders

“More criminals freed to protect human rights. Fury as more sex offenders are freed early under law on Human Rights”.
(Daily Mail, 16 May 2006)

Whilst the headline may say human rights, this is not really a human rights issue but relates to decisions made by the Parole Board.
(Human Rights Fact and Fiction, Ministry of Justice)

Health tourism

‘Human rights law promotes health tourism’
(Daily Mail, 10 May 2006)

Whilst on a legitimate visa a Nigerian woman was taken ill and told she couldn’t fly. As she was not entitled to be placed on a priority list for either British or EU citizens she died in hospital while awaiting treatment. She was not a tourist.
(Human Rights Fact and Fiction, Ministry of Justice)
