

"The human rights landscape in the United Kingdom. Is there really a case for change?" – Sir Nicolas Bratza delivers seminar at the School of Law

Sir Nicolas Bratza recently retired from his post as President of the European Court of Human Rights (ECtHR). He had served as the judge of the Court elected in respect of the United Kingdom for 14 years. From 1994-1998 he was the UK Member of the European Commission of Human Rights. Currently he serves as a Chairman of the International Advisory Panel on Ukraine and is Honorary Professor at the School of Law, University of Nottingham.

On Monday 2 March 2015 Sir Nicolas delivered a seminar at the School entitled, *The human rights landscape in the United Kingdom. Is there really a case for change?* The talk was organised by the Human Rights Law Centre for students and staff members of the School.

At the beginning of the seminar Sir Nicolas introduced the Conservatives' Proposals for changing Britain's human rights laws with the aim of protecting human rights in the UK. He critically examined the principal reasons behind the Proposals as well as the key objectives of the reforms. At the end of the seminar Sir Nicolas discussed whether these changes are necessary and what implications they will have in the future.

Sir Nicolas underlined that according to the Proposals during the passage of the British Bill of Rights and Responsibilities; there will be engagement with the Council of Europe (CoE) to seek recognition that the approach is a legitimate way of applying the European Convention on Human Rights (the Convention). Moreover, in the event that an agreement was not reached, the UK would be left with no alternative but to withdraw from the Convention, at the point when the Bill comes into effect.

According to Sir Nicolas it appears to be necessary for the Convention to be somewhat amended to provide that judgments against the United Kingdom should no longer have binding effect but only to be of an advisory nature unless and until the Parliament formally accepted them. Sir Nicolas stressed that it is unclear from the Proposals whether it is intended to apply to all judgments rendered by the Court or only those where the Court finds the British laws and legislation to be in violation of the Convention. If it is the latter then it remains unclear whether other judgments will continue to have binding effect for the UK or whether these two will depend on the acceptance by the CoE.

Moreover, he focused on the criticisms of the current human rights protection system in the UK and underlined that the criticism is based upon a small handful of cases. According to Sir Nicolas it is always ignored that the Court in reality rendered adverse judgments in less than 1% cases against the UK. He also commented on the criticism of the 'living instrument' doctrine of the Convention, stressing that this doctrine fully accords with the Vienna Convention on the law of treaties. Also it is a tool of interpretation of the Convention, well known to Parliament at the time when it incorporated the Convention.

Sir Nicolas noted that the examples introduced in the Proposals regarding expansion of Conventional rights too far or too fast are not good samples. According to Sir Bratza, it is simply untrue to allege that the draft of the Convention deliberately excluded the right of individual suffrage from the regulation, which is also expressly conferred by the International Covenant on Civil and Political Rights (ICCPR), to which the UK is also a party. It is simply untrue to say that in the case of *Vinter and Others v. the United Kingdom* the Court banned whole life sentences. Instead, the Court made clear that in such cases a mechanism for the review of the sentence should be included at some stage, such as had existed prior to the coming into force of the Criminal Justice Act 2003. Moreover, the Court in the recent case of *Hutchinson v. the United Kingdom* seems to now accept the view of the English Court of Appeal regarding the manner of release of prisoners compatible with Article 3. As to the use of Article 8 to prevent deportation,

according to his view, it's a complaint that should be directed to domestic immigration tribunals, rather than to the Strasbourg Court.

Sir Nicolas also underlined that there were numerous examples over the history of the Court, due to the drawbacks or total lack of legislation, when changes in the law have been required by the Court. In the case of *Hirst v. United Kingdom*, the judgement for which was handed down 10 years ago and is yet to be implemented, the Court followed its traditional declaratory approach and left it to the State to choose the means of implementing the judgment. He stressed that the Court has always given consideration to the domestic lawmakers, for example in the case of *Animal Defenders International v. the United Kingdom*. He also highlighted that the Court has always been respectful to the judgments of the UK domestic Courts.

Furthermore, Sir Nicolas noted that the real basis for the reforms is not that the Court has overruled some domestic judgments, but that the domestic courts have to follow the ECtHR case law. According to him even if the ECtHR case law will only have advisory status for the UK, the domestic courts will be bound by it as long as the UK remains a party to the Convention and as long as the rights protected remain substantially the same. Thus it is unlikely that the case law of the Court will be ignored at all.

According to Sir Nicolas the most radical change introduced by the Proposals is that the use of the Convention will be only limited to cases that involve criminal law and the liberty of an individual, the right to property and similar serious matters. There will be a threshold below which Conventional rights will not be engaged, ensuring that the UK courts strike out trivial cases. Sir Nicolas submitted that it is uncertain whether the Bill will define by itself the serious matters or will lay down the specific criteria.

According to his views, the human rights landscape in the UK does not require any changes and the above proposals contain certain serious threats due to the reasons stated.

After Sir Nicolas completed his speech, there followed a wide-ranging discussion of a variety of topics. Sir Nicolas opined that the UK's withdrawal from the Convention system will have severe effects on the UK's international reputation not only in the CoE, but also in the UN, EU, etc. It may also become an example to be followed by other state parties of the Convention and will be dangerous for the whole European system of human rights protection.

Report by Nino Nikolaishvili – LLM Candidate, Human Rights Law