A Modern British Court of Human Rights: A Balanced Approach

16 February 2025

A newer version of this article has been published here: https://no-bull-politics.co.uk/a-modern-british-bill-of-rights-a-balanced-sovereign-solution/

The debate over the European Court of Human Rights (ECtHR) is often framed in binary terms: either it is essential for safeguarding human rights, or it is an unacceptable constraint on British sovereignty. However, a middle-ground solution could be the establishment of a modern British Court of Human Rights—one that upholds fundamental freedoms while ensuring decisions are made in a way that respects British legal traditions and democratic accountability.

Why Reform is Needed?

1. **Democratic Accountability** – Decisions on human rights should be made by judges who are accountable to the **UK's legal and constitutional framework**, rather than an external court with no direct democratic oversight.
2. **Legal Certainty and Consistency** – While the ECtHR applies a broad interpretation of the **European Convention on Human Rights (ECHR)**, this often leads to **inconsistencies and mission creep**, where the court expands rights beyond what was originally intended. A UK-based system could ensure **more consistent and predictable rulings**.
3. **Retaining Rights While Regaining Control** – The UK has a long

history of **protecting rights through common law** and parliamentary sovereignty. A domestic court could **apply human rights principles in a way that aligns with British legal traditions**, rather than interpreting them through a Europe-wide lens.

4. **Reducing Frivolous Cases** – The ECtHR has been criticized for entertaining cases that arguably go beyond core human rights protections (e.g., prisoner voting rights, deportation cases involving serious criminals). A British court could focus on **genuine rights violations**, rather than allowing controversial rulings to override democratic decisions.

What Would a British Court of Human Rights Look Like?

- **Independently Overseen, but Nationally Grounded** – The court would be **separate from government** to maintain judicial independence, but it would **operate under UK constitutional principles** rather than being bound by external judicial activism.
- **Maintaining Fundamental Rights** – The court would uphold key rights such as **freedom of speech, fair trials, protection from torture**, but with a framework tailored to **British democratic values**.
- **Final Say on UK Matters** – Rather than appealing to Strasbourg, UK citizens would **challenge rights violations within a domestic framework**, ensuring faster and more culturally relevant decisions.
- **Parliamentary Sovereignty Preserved** – Any significant rulings could be subject to **Parliamentary review**, ensuring that elected representatives, not foreign judges, have the final say on how rights are balanced against public interest.

Would This Mean Leaving the ECHR?

Not necessarily. The UK could remain a **signatory** to the ECHR while establishing its own court as the **primary venue** for human rights cases. If necessary, appeals to the ECtHR could be limited to the most serious or

exceptional cases.

Alternatively, the UK could **negotiate a new human rights framework**, ensuring that international obligations do not override democratic decision-making.

Conclusion: A Rights-Based System That Works for Britain

A British Court of Human Rights offers a **pragmatic, middle-ground solution**—protecting fundamental freedoms without ceding control to unelected foreign judges. It ensures that human rights remain a cornerstone of British society while respecting the democratic will of the people.