

End the war on rights

BY EMMA NORTON (THE CENTRE FOR MILITARY JUSTICE)¹

Weakening the protections of the European Convention on Human Rights (ECHR) is bad for the armed forces, and bad for all of us.

It's Groundhog Day for human rights. I was a keen young paralegal when the Human Rights Act (HRA), which incorporates European Convention rights into domestic law, was brought into force. Even back then, it wasn't long before [influential voices](#) were calling for it to be 're-balanced' because of the perception that it was some sort of 'villain's charter'.²

These objections have continued down the decades, whether levelled at the HRA or the ECHR itself. The objections usually focus upon an immigration case presented as an example of wider human rights madness – a close examination of the reported case (where it can be found) usually reveals a far more nuanced, complex picture than the one reported.

Are we told the full story about human rights protections and the armed forces?

No, rather for many years, the armed forces have also provided fertile ground for various myths and misrepresentations about the HRA/ECHR to be spun whenever the government or opposition feel the need to throw red meat around. Last year, Robert Jenrick MP was decrying the application of the ECHR to 'the battlefield' and said that if our armed forces captured terrorists overseas, the ECHR would set them free.³ This was of course [nonsense](#).⁴

Other examples in recent years include the former [minister for defence people and veterans' efforts](#) to limit the scope of the HRA overseas; or the false narrative around the Overseas Operations Act, passed in 2021, that [suggested there was an 'industry' of](#)

¹ <https://centreformilitaryjustice.org.uk/>

² theguardian.com/politics/2008/dec/08/human-rights-act-straw

³ thetimes.com/uk/politics/article/robert-jenricks-special-forces-claims-fact-checked-vlsnfxwnm

⁴ <https://centreformilitaryjustice.org.uk/stop-using-soldiers-to-justify-lazy-ignorant-attacks-on-the-european-convention-on-human-rights/>

[vexatious claims](#) against soldiers.⁵ Very recently, the fears of elderly veterans that served in Northern Ireland during the Troubles have been weaponised to justify attacking the Labour government's decision to repeal the despised Legacy Act (that ended all investigations, prosecutions, inquests and civil claims into alleged atrocities during the conflict), an Act that had been declared by the courts to be unlawful and contrary to the ECHR.

The law in this space is complex and the cases that have been brought seeking to apply the ECHR overseas have been badly misrepresented over the years by people that ought to know better. Statements have been made that inaccurately describe the law and create the impression that the HRA applies wherever British forces are deployed overseas, or that soldiers will have to take lawyers on to the battlefield with them. That is simply not correct. The judgments in question are measured and reasonable and at each stage the courts have recognised the limitations of their jurisdiction. There has not been a single case where a commander's decisions on the battlefield has been litigated.

Why service personnel need the ECHR

The fact is that the ECHR rights of the HRA have been immensely beneficial to the armed forces. The CMJ is running a short series of blogs prepared by service personnel or their families, explaining how the HRA helped them, and how the HRA brought about much needed reforms that have had the effect of improving service life. You can read some of those stories [here](#).⁶

Examples

- The Deepcut families, that used the HRA to finally hold the army to account over the deaths of their children, after years of stone-walling, revealed a toxic, abusive and out-of-control camp where their children were unsafe and which cost them their lives.
- The Ellement family that used the HRA to expose appalling attitudes to sexual violence in the Royal Military Police, bullying and a lack of support for vulnerable people; and secured a fresh investigation into the reported rape of their sister and daughter.
- The Smith family that used the HRA to expose how serious equipment failures meant that their son had little hope of survival when he came under attack in Iraq.

⁵ [https://hansard.parliament.uk/lords/2021-01-20/debates/3CCFD6D5-5182-484F-8F0C-28DB13339980/OverseasOperations\(ServicePersonnelAndVeterans\)Bill](https://hansard.parliament.uk/lords/2021-01-20/debates/3CCFD6D5-5182-484F-8F0C-28DB13339980/OverseasOperations(ServicePersonnelAndVeterans)Bill)

⁶ <https://centreformilitaryjustice.org.uk/guide/military-human-rights-stories/>

- The veterans that used the HRA to challenge the so-called ‘gay ban’ and forced the Ministry of Defence to change its outdated and backward attitudes towards LGBTI people.
- The rape survivor that used the HRA to force the government to place the issue of how military rape cases should be handled before parliament and secured a review of all armed forces policies on the handling of sexual assault.
- The two rape survivors that [successfully challenged the MoD's policy](#) that banned them from communicating with the press or parliament about their appalling experiences as sexual assault survivors in the armed forces.

I could go on. There are so many other stories. They all have two things in common. First of all, each case led not only to an important outcome for that individual or their family, but also to wider policy reform that improved things for lots of other service people. And secondly, it was **only** the HRA that enabled the case to be brought – without the HRA, those reforms would simply never have happened.

Service personnel deserve human rights protections like everyone else

Twice a year the CMJ lectures at the Defence Academy. We consistently find there people that are genuinely interested, curious and engaged in these issues. Our experience is that service personnel do not want to work within a system where human rights are not protected – that is not what they signed up for. They do not want to be the victims of mistreatment, they do not want to commit acts of abuse, they do not want to serve alongside people that abuse and they want to be assured that wrongdoing, where it happens, is dealt with through an effective and fair system of justice.

For those for whom the state looms large in their lives, ECHR rights are absolutely vital. That is why such significant numbers of HRA cases have been brought by children in care, people receiving psychiatric care in NHS hospitals, people in detention, people subject to immigration control, and service personnel – whose lives are tightly controlled by the state in a way that civilians find hard to imagine. They need and deserve its protection too. The government’s proposals to dilute the protection of the HRA – and the proposals from the Conservative party and Reform UK to come out of the ECHR altogether – are bad for the armed forces and bad for all of us.

Emma Norton is one of the founders of the Centre for Military Justice (CMJ) and the former head of the legal team at the human rights organisation Liberty. The CMJ helps people affected by serious bullying, harassment, discrimination and poor welfare provision within the armed forces; human rights law is a central component of this work. See more at: <https://centreformilitaryjustice.org.uk/>