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Towards a biblical mind

Should the UK leave the European Convention on Human Rights?

By Julian Rivers

Summary
The proposal that the UK should leave the European Convention on Human Rights (ECHR) is motivated at present mainly by the view that it represents an obstacle to the control of irregular migration. This paper argues that the ECHR was influenced historically by Christian political convictions, and that there are still strong grounds for Christians to support it. Far from being an obstacle, it provides a humane safeguard, offering valuable, if limited, protection against authoritarian state tendencies across Europe. Problems in its judicial implementation need to be addressed – not by leaving, but by more critical engagement.[1]

The Council of Europe

Modern systems of human rights protection across the world originate in attempts after the Second World War to prevent the resurgence of fascism and inhibit communism. This movement bore fruit at European level in the formation in 1949 of the Council of Europe, an international organisation committed to promoting democracy, protecting human rights and securing the rule of law across Europe. The UK was a founder member.[2]

The organs of the Council of Europe include a Committee of Ministers representing state governments, a Parliamentary Assembly consisting of members of national legislatures, a Secretary General, and a Court (ECtHR) with one judge from each member state. These bodies are state-like, but the Council of Europe is quite different from the European Union. It is an international organisation, limited in remit and only creating international obligations between the member states.

The European Convention on Human Rights 1950 remains the flagship treaty of the Council of Europe. It specifies some of the most basic rights, protecting without discrimination the human body,[3] legal processes[4] and the independence of family and civil society from state control.[5] The original text of the ECHR stopped there, and the relative conservatism of the rights selected, even by the standards of the 1950s, reflects its binding nature and the need to secure a rapid consensus. Since then, optional protocols containing further rights have been added.[6]

The European Convention on Human Rights 1950 remains the flagship treaty of the Council of Europe.

A groundbreaking novelty of the ECHR was the optional provision it made for individual citizens to make allegations of

1 I am grateful to John Duddington, Peter Frost, David McIlroy and, as ever, the members of the Cambridge Papers editorial group for their extensive engagement with earlier drafts of this paper. The opinions expressed are my own.
2 A.W.B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: OUP, 2001).
3 Protection from killing, torture, degrading or inhuman treatment or punishment, forced labour and arbitrary detention.
4 Fair trials, prompt proceedings, effective remedies and enforcement, no punishment without a legal basis.
5 Privacy and family life, freedoms of thought, conscience and religion, expression, assembly and association, and the right to marry and found a family.
6 E.g. Protocol 1 protects property, a basic education and democratic participation.

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violations against their own states. Initially cautious, the UK government accepted the right of individual petition in 1966, since which time applicants have been able to take their case alleging a violation of the Convention 'to Strasbourg'. The ECHR is now just one of several international and regional human rights treaties, but it remains the most developed and effective in the world because of its processes and remedies.

Originally, those processes were rather small-scale. There was a Commission of lawyers who could investigate complaints and report to the Committee of Ministers, and a part-time Court to hear disputes about interpretation. However, from the 1970s the Court started to develop its case law, and since that time there has been a steady growth of the ECHR system from being an anti-totalitarian safety net to becoming more constitutional.[7] The ECHR is a 'dynamic' treaty: as the Court develops Convention case law, so the obligations of member states are clarified and extended. Member states are legally obligated to abide by judgments in cases to which they are a party, and the Court can require reparation and just satisfaction to victims. Enforcement is overseen by the Committee of Ministers, which can bring political and diplomatic pressure to bear to secure compliance. The final sanction is expulsion, as happened to Russia in 2022 as a result of the invasion of Ukraine.

We follow Jesus, who gave up his rights to come among us as one who serves.

The collapse of communist regimes in Central and Eastern Europe in the early 1990s resulted in rapid enlargement of the Council of Europe in an attempt to shore up nascent democratic movements. Accession to the ECHR and the right of individual petition are now requirements of membership; the UK could not leave the ECHR without leaving the Council of Europe entirely. Forty-six of Europe's states are members, the only exceptions being Russia and Belarus. In 1998 major institutional reform resulted in the abolition of the Commission and the creation of a permanent court to deal with an ever-growing caseload.[8] Only a few violations each year are found against the UK – just one in 2024.

Christian rights-scepticism

Natural rights were emphasised in the political theories of Christian philosophers such as Althusius, Grotius, Pufendorf and Locke in the 17th and 18th centuries. After the American and French revolutions, their ideas came to influence constitutional traditions in many countries, which formed the basis for the post-war human rights movement. However, there is also a long tradition of scepticism about natural and human rights among Christian thinkers.[9]

It is indeed better to think of personal morality in terms of virtuous dispositions and duties towards God and neighbour, not in terms of individual rights. We follow Jesus, who gave up his rights to come among us as one who serves.[10] In a political context, talk of natural or human rights can be crude, corrupting and corrosive: crude because a handful of abstract claims to life, liberty and equality cannot resolve complex questions of justice which depend on context and circumstance; corrupting because it can encourage a belief in human self-ownership (when actually we belong to God and owe him everything); corrosive because rights elevate the individual above the community, pitting us against each other in antagonistic relationships. Rights-sceptics are correct to warn of these dangers.

However, this is not the whole story. Rights can also mark the value and dignity of each human being; there is a massive difference between voluntarily giving up our rights and denying that they exist in the first place. The Catholic tradition has long been welcoming of talk about natural and human rights,[11] and many Protestants agree.[12]

More importantly, theological and ethical criticisms of rights do not apply straightforwardly to law. A functioning legal system cannot work except by allocating to specific individuals the power and responsibility to secure the basic interests that law exists to protect. Rights are an inevitable part of the grammar of human legal systems. The ethics underlying the ECHR need not necessarily be based upon 'natural' rights; it is enough that like any other system of law it fulfils a useful practical role in harnessing individual and collective self-interest to protect people from significant forms of injustice.[13] Rights are an effective tool to this end.

European Christian democracy

The immediate post-war period of the mid-20th century saw the emergence of political movements across western Europe which clustered around a distinctive model of state-building. In Christian terms this can be described as follows: governments are natural human institutions ordained by God to promote human flourishing by limiting evil behaviour and orienting human action towards the common good. As concentrations of power, they are also peculiarly vulnerable to corruption, at worst becoming diabolical vehicles of hatred towards God and

7 Ed Bates, *The Evolution of the European Convention of Human Rights* (Oxford University Press, 2010).
8 In 2024 the Court decided 36,819 applications, striking out or declaring inadmissible about two-thirds of them, delivering 1,102 judgments in respect of the others, and finding violations in 1,000 of these. See *Annual Report of the European Court of Human Rights* 2024, 33–38.
9 Nigel Biggar, *What's Wrong with Rights?* (Oxford University Press, 2020).
10 Phil. 2:1–11; John 13:1–17.
11 See, above all, John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).
12 See Nicholas Wolterstorff, *Justice: rights and wrongs* (Princeton University Press, 2008); John Witte, Jr., *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge University Press, 2022).
13 Julian Rivers, 'Rights and Freedoms: Christian Constitutional Rights?' in Nicholas Aroney and Ian Leigh (eds.), *Christianity and Constitutionalism* (Oxford University Press, 2022).

European Court of Human Rights, Strasbourg

their chosen victims. Of all the forms of government, a representative democracy stands the best chance of ensuring that government remains directed towards its proper ends, since it reflects a fundamental commitment to the equal value and responsibility of each human being.

However, even democracies are at risk of approving oppressive behaviour towards minorities, so they benefit from having constitutionally established limits upheld by judges who are independent of the current majority. Democracy is best secured in the long-term through the judicial protection of basic civil and political rights, within which constraints the state has the responsibility to develop social, economic, cultural and environmental policy to improve the living conditions of all. It is also useful to have a level of global oversight to address national blind-spots and ensure that entire systems of government do not become corrupt. This oversight is provided by international human rights and humanitarian law.

The political response to early-20th-century totalitarianism aligned closely with contemporary Catholic social thought, which emphasised both the duty of the state to care for the social and economic wellbeing of the poor, while still respecting the freedom of the individual, family, church and civil society.[14] Philosophically, these concerns came to be articulated and defended supremely by John Rawls in his *Theory of Justice* (1972). Rawls was strongly influenced by Protestant theology, even if he later lost a personal faith.[15] As time passes, the ecumenical Christian origins of the ECHR become increasingly obvious to modern scholars of the period.[16]

Five reasons for defending the ECHR

There are five basic features of the ECHR system which continue to make it attractive from a Christian perspective.

It seeks to protect the vulnerable

In his earthly ministry, Jesus showed abundant care for the poor, the weak and the oppressed, teaching his followers to do likewise.[17] In this, he was simply living out the Old Testament law which sought to protect the socially marginalised: the poor, the orphan, the widow and the alien.[19] The early church was noted for its countercultural concern for the vulnerable, expressed in the increasingly rationalised administration of welfare.[19] The ECHR hardly begins to address many of the main causes of vulnerability but it does seek to address one particular form – that of being a social or political minority within a powerful modern state.

This can play an important role even in relatively well-governed states. In considering the work of the Council of Europe, it is important not to take individual British cases out of context. In terms of human rights violations, the worst offenders in 2024 were Russia (before it was expelled), Ukraine, Turkey, Italy, Hungary, Azerbaijan and Poland.[20] The rights most often affected were the right to personal liberty, protection from degrading or inhuman treatment or punishment, the right to a fair trial, the right to an effective legal remedy, protection from excessively long legal proceedings, and the right to effective investigation and enforcement. The bulk of the Council of Europe's work lies in trying to bring legal and diplomatic pressure to bear on states that, by uncontentious standards, treat some of their citizens very badly. It has also provided the context for the development of over 200 other treaties addressing a wide range of evils which benefit from international collaboration, such as human trafficking, cybercrime, doping in sports and domestic violence. But its bread-and-butter work lies in the much more mundane tasks of trying to battle corruption in public office, political violence, overwhelmed judicial systems, awful prison conditions, and the state-tolerated persecution of minorities. This work is unconditionally valuable.

It promotes government through law

It is only at first sight paradoxical that Christianity, which preaches grace and forgiveness, should have generated political cultures which are so legalistic. But 'gospel' and 'law' are not opposed; they have the same orientation towards the good.[21] In a supreme act of divine politics that has echoed down the centuries, God rescued his people Israel from slavery in Egypt, constituted them a nation under law at Sinai, and brought them into the freedom of the promised land.[22] If the most basic task of the church is now to proclaim the good news of reconciliation with God through the work of Jesus Christ, the most basic task

14 Michael Novak, *Catholic Social Thought and Liberal Institutions: Freedom with Justice* (Taylor & Francis, 2017). Jacques Maritain was an important figure in this respect.
15 Eric Gregory, 'Before the Original Position: the Neo-Orthodox Theology of the Young John Rawls' (2007) 35.2 *Journal of Religious Ethics,* 179–206; Eric Nelson, *The Theology of Liberalism: Political Philosophy and the Justice of God* (Belknap Press, 2019).
16 Samuel Moyn, *Christian Human Rights* (University of Pennsylvania Press, 2015); Marco Duranti, *The Conservative Human Rights Revolution* (Oxford University Press, 2019); Udi Greenberg, *The End of Schism: Catholics, Protestants, and the Remaking of Christian Life in Europe*, 1880s–1970s (Harvard University Press, 2025).
17 See, e.g., Matt. 25:31–46.
18 Deut. 15:1–11; Exod. 22:21–24; Ps. 146:7–9.
19 Robert Wilken, *The First Thousand Years: A Global History of Christianity* (Yale University Press, 2014), ch. 16.
20 See 'Violations by Article and by State' in *Annual Report of the European Court of Human Rights* 2024, 38.
21 1 Tim. 1:8–11; Rom. 3:31.
22 Exod. 19–23; Deut. 5.

of the state is to secure peace, order and justice through law, and ultimately by force.[23]

The Council of Europe exists to promote the rule of law in Europe. Some of the articles of the ECHR concern the good design of legal systems; others require state limitations on rights to be prescribed by law. The Court interprets this in standard formal terms to mean that where governments take action which affects individuals in their most basic rights, they must do so according to public rules which are sufficiently clear and precise for individuals and their advisers to know in advance how the coercive force of the state will be applied against them. The whole ECHR is part of a global law system which has been painstakingly developed over 75 years as a peaceable alternative to international relations characterised only by national self-interest and, ultimately, war.

For Christians, the human person is fundamentally neither just an individual nor an indistinguishable part of society.

It attempts to balance the interests of individuals and society

For Christians, the human person is fundamentally neither just an individual nor an indistinguishable part of society. We are relational beings, modelled after the pattern of the triune God who is both one and three. So we are both individually responsible before God,[24] and yet we can find our most basic identities and destinies 'in Adam' and 'in Christ'.[25] As Christians, we should be as worried about excessive individualism as about oppressive collectivism.

The rights set out in the ECHR are not absolute. The civil liberties contained in Articles 8 to 11 are expressly limited by the need to protect a wide range of social interests and policy objectives through law. The Court repeatedly emphasises that the underlying logic of all rights, even those drafted in unconditional terms, is to find the correct balance between the interests of the individual and society.[26]

Since the 1970s, the Convention has been treated as a 'living instrument'. Legal texts which are phrased in abstract terms and hard to change must be treated with a degree of creativity if they are to be applied to new situations, and the Court has sought to make rights ever more effective. It is inevitable that judgments have reflected the increasing individualism of European societies. The clearest examples can be found in the case law on article 8 ECHR. This article protects the right to respect for private and family life, home and correspondence. It was intended primarily as a guard against surveillance by oppressive governments, but over the years, the Court has developed a vast array of applications, effectively turning it into an in-principle right to individual autonomy.[27]

Nonetheless, the Court proceeds with caution, as the cases involving family, gender and sexual ethics show. For example, the right to marry does not include a right to divorce, but if divorce is permitted it must be available without unreasonable restrictions such as excessive delay.[28] There is only a very limited right to abortion.[29] Same-sex couples have no right to marry: 'marriage has deep-rooted social and cultural connotations which may differ largely from one society to another', and so the Court 'must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society'.[30] However, in the light of the growing recognition of same-sex partnerships across Europe, states do now need to make available a basic legal framework of recognition.[31] The Court is well-aware of the difficulties in this area: 'striking a balance between the protection of the family in the traditional sense and the Convention rights of sexual minorities is in the nature of things a difficult and delicate exercise, which may require the State to reconcile conflicting views and interests perceived by the parties concerned as being in fundamental opposition'.[32]

At risk of generalisation, British culture, its law and its judges seem rather more individualistic than the European mainstream. In practice, and with the notable exception of the Gender Recognition Act 2004, European case law has tended to lag behind British legal developments in this respect.[33]

It is a check on powerful political institutions

From at least the 18th century, it has been well understood that for political power to be well-exercised, it needs to be subject to a system of checks and balances. It is a profoundly Christian insight that we human beings are fundamentally untrustworthy, and that with great power comes the risk of great abuse.[34] More positively, the ideal community, the body of Christ, is characterised by a diversity of members who exercise their distinctive gifts for the good of all.[35]

In practice, acting as a check on the abuse of power inevitably involves opposition and controversy. Here, also, the ECtHR tries to get the balance right. Many of the cases turn on whether the government can show that the interference with the applicant's rights has a proper legal basis and is 'necessary in a democratic society'.

23 Rom. 13:1–7; 1 Tim. 2:1–4; 1 Pet. 2:13–17.
24 Rom. 14:9–12; 2 Cor. 5:10.
25 Rom. 5:12–21; 1 Cor. 15:42–49.
26 *Sporrong & Lönnroth v Sweden* (1983) 5 EHRR 35.
27 N. Moreham, 'The Right to Respect for Private Life in the European Convention on Human Rights: A Re-examination' [2008] *European Human Rights Law Review* 44.
28 *Johnston v Ireland* (1987) 9 EHRR 203; *VK v Croatia* (2012).
29 *A, B, C v Ireland* (2011) 53 EHRR 13; *ML v Poland* (2023).
30 *Schalk and Kopf v Austria* (2011) 53 EHRR 20 at [62].
31 *Vallianatos v Greece* (2014) 59 EHRR 12; *Oliari v Italy* (2017) 65 EHRR 26; *Orlandi v Italy* (2017).
32 *X v Austria* (2013) 57 EHRR 14 at [151].
33 For this reason, British scholars are sometimes critical of the ECtHR's conservatism. See, e.g., Alan Desmond, 'The Private Life of Family Matters: Curtailing Human Rights Protection for Migrants under Article 8 of the ECHR?' (2018) 29.1 *European Journal of International Law,* 261–279.
34 See, for example, the story of Naboth and his vineyard in 1 Kings 21, or the fate of Herod Antipas in Acts 12: 21–24.
35 Rom. 12:3–8; 1 Cor. 12:12–31.

That, of course, is a matter of judgment, and although the Court has developed doctrines of subsidiarity and the 'margin of appreciation' to give each member state some leeway in determining the balance of relevant interests for itself, it is arguable that at times the Court has gone beyond an appropriate international supervisory role. As Convention case law has developed, it has encroached on disputed areas of social and economic policy, areas which one might think are better resolved through political negotiation and compromise.

However, a judgment of the European Court against a member state is not the end of the matter. Even after it has found a violation of rights, a member state which has strong political objections to the judgment is able to negotiate the conditions of enforcement – as the British government did very effectively over the question of prisoners' voting rights in the early 2000s. Beyond these diplomatic processes, there many examples of simple non-compliance. The extent to which this is a problem varies, but it does not render the system entirely ineffective.[36]

European human rights protection is only ever a backstop. Governments still have to assimilate and respond to decisions, and cannot ultimately be forced to comply. Indeed, it is better to think of the whole system as establishing more rigorous requirements of public justification and a more structured and complex process of political negotiation whenever laws and policies bear down heavily on specific individuals. That takes time and costs money, but it is also a valuable constraint upon power.

The Council of Europe has made a significant contribution to the protection of religious freedom.

It upholds freedom of religion

The Christian Church has not always resisted the lure of state power and coercive promulgation, but its teaching also contains the seeds of religious liberty.[37] Jesus' global kingdom is 'not of this world'.[38] Its growth depends on the work of the Holy Spirit in transforming the heart.[39] Divine judgment is deferred to the end of time.[40] The affairs of the church are not to be entangled in those of the state.[41] In all these biblical claims lies the wellspring of religious liberty.

The Council of Europe has made a significant contribution to the protection of religious freedom, particularly after the collapse of communist regimes in Eastern Europe. Repeated resolutions of the Parliamentary Assembly have insisted on the importance of the freedom of churches,[42] and the ECtHR has developed an important body of case law protecting both individual and collective aspects of 'freedom of thought, conscience and religion'.[43] States are under obligation not only to respect the freedoms of religious believers, but also to protect them from social hostility. Disappointed British litigants taking their cases to Strasbourg may not have won as often or as convincingly as they would have liked, but they have done enough to show that European supervision is a reality. Readers may remember the case of Nadia Eweida, the British Airways employee.[44] And it has to be recognised that the difficulties of socially conservative British Christians have not reached anything like the severity of the challenges faced by fellow-believers in some other Eastern and Southern European nations, let alone the levels of persecution elsewhere in the world.

Within the UK as well, the ECHR has proved an important source of argument in cases where Christians have experienced the sharp end of cultural tensions. It has been particularly significant in shaping judicial interpretations of the obligations of employers not to discriminate because of religion. The statutory obligation to interpret legislation compatibly with Convention rights has resulted in a liberty-enhancing approach to law which emphasises equal religious freedom above any supposed 'neutrality'. From a purely practical perspective, it is hard to see how cases such as those of Ashers Bakery, Felix Ngole and Kristie Higgs – and many others less prominent – could have been argued without it.[45]

The case for leaving

Why, then, should the UK leave? Apart from general hostility to anything 'European' in the aftermath of Brexit, the immediate catalyst for calls to withdraw from the ECHR has been the charge that it hampers efforts to control irregular migration. The Conservative Party has recently sought to widen the scope of the debate beyond this single issue. In a speech on 6 June 2025, the Conservative Party leader, Kemi Badenoch, set out five 'tests' for withdrawal and commissioned legal advice to see if those tests were met.[46] Under the first, 'Sovereign Borders' test, there can be no doubt that the ECHR sets limits to immigration and asylum policy. The legal advice also makes a good case for adding the development of law relating to the personal liability of members of the armed forces as a second major policy flashpoint (the 'Veterans' test). However, in respect

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36 Latest detailed analysis of effectiveness in *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights (18th Report of the Committee of Ministers*, 2024).

37 For a major treatment, see Timothy Samuel Shah and Allen D. Hertzke, *Christianity and Freedom: Historical Perspectives* (Cambridge University Press, 2016).

38 John 18:36.

39 John 3:1–21.

40 Matt. 13: 24–30; 36–43.

41 Matt. 22:15–22; 1 Cor. 6:1–6.

42 See, for example, Resolution 2036 (2015) 'Tackling intolerance and discrimination in Europe with a special focus on Christians'.

43 European Court of Human Rights, 'Guide on Article 9 of the European Convention on Human Rights' (2025).

44 The other three applicants lost in the conjoined cases of *Eweida, Chaplin, McFarlane and Ladele v United Kingdom* (2013) 57 EHRR 8.

45 *Lee v Ashers Baking Co Ltd* [2018] UKSC 49; *R (Ngole) v University of Sheffield* [2019] EWCA Civ 1127; *Higgs v Farmor's School* [2025] EWCA Civ 109.

46 <https://www.conservatives.com/news/kemi-badenoch-exposes-the-laws-and-treaties-holding-britain-back>; Lord (David) Wolfson KC and Rt. Hon. Helen Grant, *Legal Advice to the Leader of the Conservative Party re ECHR* (2 October 2025).

of the third, 'Fairness' test (priority to British citizens in social housing and welfare benefits), the relevance of the ECHR is peripheral. In the case of the fourth, 'Justice' test (obstacles to mandatory 'harsh' prison sentences and blanket bans on certain public protests), the relevant law derives as much from the attitude of the British judiciary as the European Court itself.[47] The fifth, 'Prosperity' test (obstacles to infrastructure projects based on climate change litigation), has really very little to do with the ECHR, resulting instead from a raft of other international and national legal instruments, combined with growing judicial oversight of administrative decision-taking.

One can see here at least three layers of concern: a very small set of specific policy areas in which the ECHR arguably presents obstacles to national interests, systemic weaknesses in the ECHR and the way it takes effect in the United Kingdom through the Human Rights Act 1998 (HRA), and disquiet about the role of law in public administration generally.[48] Part of the context here is of a general relocation of power within the modern state away from politics towards law.[49] We need to look further at the example of immigration and asylum law to see how these concerns intertwine.

Domestic immigration and asylum law operates within an international legal context which includes not only the ECHR, but several other international treaties.[50] Although the ECHR contains no right of immigration as such, the ECtHR confirmed at an early stage that any individual who finds themselves within the jurisdiction of a state party to the Convention is protected by it.[51] However, the level of protection is not the same. In *Saadi v UK*,[52] the ECtHR agreed that, in general, detention pending determination of an immigration claim to 'prevent unauthorised entry' is justifiable. Detention without a criminal investigation could never apply to citizens. Outside of the immigration context, the most common European human rights violations involve the right to a fair trial in criminal and civil proceedings. However, this article does not apply in immigration cases, which are treated by the Court as being 'administrative' in nature. This means that in practice, by far the most common human rights appeals in immigration cases are based on articles 2, 3 and 8.

Articles 2 and 3 protect the right to life and freedom from torture and inhuman or degrading treatment or punishment. Their main effect is to block deportation or extradition of individuals who face a real risk of being killed or subjected to extremely poor conditions on their return. This goes further than the obligation under the Refugee Convention 1951 not to return an asylum seeker

who faces a 'well-founded fear of persecution'. Where the risk comes from the actions of state agents the practice is to secure a memorandum of understanding from the destination state to attempt to secure sufficient protection, but this can be problematic in cases of alleged torture in custody, which is usually publicly denied anyway. Poor conditions may also be brought about by non-state actors, as for example in civil war situations.[53] Article 3 has implications for the way the UK treats asylum claimants, who must not be subjected to enforced destitution or intolerable camp conditions.[54] It also has some relevance in exceptional cases where the deportee is likely to die quickly without access to European medical facilities.[55] The most controversial application has been in the case of terrorist suspects who risk being tortured, or tried in a criminal process which depends on evidence gained from others by torture, if deported.[56] The ECtHR has refused to soften the absolute nature of the prohibition even here.[57]

Article 8 protects (among other things) the right to family life. Here, the main application is in terms of the impact of removal on the applicant's family life in the UK.[58] However, family life is a 'relative' right which allows for restrictions in proportionate pursuit of a wide range of public interests. In considering removal, relevant questions include how well a spouse can cope with living in the other country, the settlement of any children, other UK family ties, and health and education needs. In 2012, the government introduced new immigration rules reflecting its view of the appropriate balance of factors in a wide range of cases; the Labour Government wants to revisit these rules.[59] Courts give 'appropriate weight' to

47 See *DPP v Ziegler* [2021] UKSC 23 on the requirement of proportionality for policing restrictions on public protests.
48 Richard Ekins and Sir Stephen Laws, *The Future of Human Rights Reform* (Policy Exchange, 1 October 2025).
49 See Jonathan Sumption's 2019 Reith Lectures, now published in *The Challenges of Democracy and the Rule of Law* (Profile Books, 2025).
50 Most notably: the 1951 Refugee Convention, as well as several other international human rights treaties.
51 *Abdulaziz, Cabales and Balkandali v UK* (1985) 7 EHRR 471, [59].
52 [2008] ECHR 79.
53 E.g., the general violence in *Mogadishu in Sufi & Elmi v UK* [2011] ECHR 1045.
54 *R v SSHD ex p Adam, Limbuela and Tesema* [2005] UKHL 66; *MSS v Belgium and Greece* [2011] ECHR 108. See also the public enquiry into the Brook House scandal in 2017.
55 *N v SSHD* [2005] UKHL 31; *Paposhvili v Belgium* [2016] ECHR 1113.
56 *Chahal v UK* (1997) 23 EHRR 413; *Othman v UK* (2012) 55 EHRR 1.
57 *Saadi v Italy* [2008] ECHR 179.
58 For the value of family life, see *Huang and Kashmiri v SSHD* [2007] UKHL 11 at [18].
59 HM Government, *Restoring Control over the Immigration System*, CP 1326 (May 2025), para. 135.

them while remaining the ultimate arbiter of whether human rights would be infringed by removal.[60]

The right to family life means that it can be inhumane to deport even a convicted criminal. This is particularly controversial. However, it is worth noting that the English law 'translation' of these standards is rather strict: courts have referred to 'insurmountable obstacles' and the Immigration Rules refer to 'very significant difficulties' in maintaining family life, if the removal goes ahead.[61] Such cases show why the charge that the ECHR prevents states from deporting foreign criminals is far too crude. In particular cases, it does. In general, it does not.

Domestic immigration law is based on Acts of Parliament, but governed in detail by the Immigration Rules, which have the status of non-legal administrative guidance. These are characterised by a high degree of executive discretion, and the judicial protection of human rights is the main counterweight to secure their humane application in individual cases.[62] It is true that there are some maverick first instance decisions, and that each of us might draw the line balancing the interests of individual migrants with our collective need to regulate migration in a slightly different place. But we should not accept an immigration system which completely failed to take account of such considerations. The real problem is not the legal standards being applied; it is the fact that there are legal remedies at all which slows down the entire process.[63]

Leaving the ECHR will do nothing by itself to solve the problem of global migration.

Underlying the specific problems there is a misalignment of legal cultures. The European Court has developed its case law in ways which can seem unpredictable and uncontrolled.[64] In part this results from its attempts to accommodate political realities, in part also from legal traditions which are not as cautiously incremental and rigorously reasoned as the English common law. On the other hand, British politicians and judges have treated the judgments of the European Court with considerable respect – almost as if it were our own Supreme Court. Strictly speaking, the UK is only bound to comply with judgments to which it has been a party. British judges are not required to follow the case law of the ECtHR; they can depart from it and have on occasion. Parliament remains free to legislate in 'principled defiance'[65] of the Court's interpretation should it so wish. But in practice, this hardly ever happens.

What should be done?

There is no easy way forward, but here are three suggestions. First, the UK should not leave the Council of Europe. The early part of this paper has made the case that in principle, and in spite of its flaws, there are still very good reasons for wanting to uphold and remain part of the ECHR. For all our sakes, it needs to work. To that general argument can be added a specific concern about the effect on Northern Ireland. Although some have argued that the Belfast (Good Friday) Agreement does not strictly require continued membership of the Council of Europe,[66] that argument is rejected by others, and, most importantly by the Irish Government.[67] Whatever the position in strict law, the potential damage to peaceful community relations should not be underestimated. Leaving would also adversely affect valuable working relations with the EU in policing and criminal justice matters under Part III of the post-Brexit Trade and Cooperation Agreement.

Secondly, we should focus on improving the poor administration and enforcement of existing laws.[68] Leaving the ECHR will do nothing by itself to solve the problem of global migration. It is a significant challenge to work out how, practically, to manage large numbers of arrivals in a way which offers sanctuary to those who have a genuine claim, and to take humane account of established personal and family bonds when determining immigration status, while at the same time ensuring proper integration and harmonious community relations. Short of scrapping legal protection for migrants altogether – thereby risking their inhumane treatment in breach of several other international legal obligations – further adjustment of the content of the rules is unlikely to have an effect. What is needed are effective mechanisms to implement current laws.[69]

Thirdly, we do need to establish a different relationship with the European Court of Human Rights. The Human Rights Act 1998 was introduced in order to 'bring rights home'. It sought to ensure that what were basically good cases brought by British litigants could be resolved more quickly and locally. In this it has been remarkably successful. In theory, it was also designed to respect the supremacy of Parliament and judicial independence so that home-grown interpretations of the Convention could emerge over time. Here it has largely failed, resulting in unthinking, if at times unwilling, compliance. The two original aims are still valid, but uncontrolled creativity by

60 *MM Lebanon & Ors* [2017] UKSC 10.
61 *Agyarko and Ikuga v SSHD* [2017] UKSC 11.
62 This point is set out clearly in three 2008 judgments in the House of Lords: *Chikwamba v SSHD* [2008] UKHL 40, *Beoku-Betts v SSHD* [2008] UKHL 39, and *EB (Kosovo) v SSHD* [2008] UKHL 41.
63 Only a tiny proportion of deportations are successfully challenged on human rights grounds. See Victoria Adelmant, Alice Donald and Başak Çali, *The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate* (Bonavero Institute, 4 September 2025).
64 See, for example, *Verein KlimaSeniorinnen v Switzerland* (2024).
65 Richard Ekins and Sir Stephen Laws, *The Future of Human Rights Reform* (Policy Exchange, 1 October 2025), 67f.
66 Conor Casey, Richard Ekins and Sir Stephen Laws, *The ECHR and the Belfast (Good Friday) Agreement* (Policy Exchange, 31 August 2025); see also the Wolfson Advice at [242] – [266].
67 Colin Murray and Aoife O'Donoghue, T*he Belfast/Good Friday Agreement 1998 & ECHR: Explainer* (Centre for Administrative Justice, September 2025).
68 <https://nicktimothy.com/report-by-nick-timothy-mp-on-the-home-office-exposes-a-culture-of-defeatism-and-poor-management/>.
69 Fuller consideration of the substance of immigration policy, including attempts to address the underlying causes of irregular migration, is beyond the scope of this paper.

the ECtHR exposes the tension between them. In order to manage that tension, we need to break out of the binary choice of compliance or defiance, and develop a political-legal system which has the independence and the mindset to *interpret the ECHR better than the Court*.

Some changes to the HRA 1998 might prompt this. Section 2, which only actually requires courts and tribunals to 'take into account' decisions of the ECtHR, could be clarified to confirm that only decisions to which the UK is party are binding in international law. The wording of section 3, which requires Convention-compatible interpretations of existing laws 'so far as it is possible to do so', could refer instead to situations of legislative ambiguity. The government's power under section 10 to legislate by way of remedial order, which is constitutionally suspect in any case, could be repealed. And section 19 ministerial declarations of compatibility could be scrapped: they seem only to reinforce a culture of political acquiescence without contributing to a proper consideration of the implications of proposed legislation for the human rights of those who will be affected by it.

Finally, domestic changes need to be combined with a sustained effort to crystallise recognition across Europe of the reality that the Court is now capable of generating new international obligations which have only the most tenuous connection with the original commitments of member states. Admittedly, there is widespread agreement that attempting to reform the Court itself would be complex, time-consuming and unlikely to bring about much change. The UK attempted this before in a process leading to the 2012 Brighton Declaration and changes to the Convention Preamble, to no evident effect. On 22 May this year, a group of nine other European states led by Denmark and Italy issued an open letter calling for change in the interpretative approach of the ECtHR in immigration cases.[70] After initially rejecting such calls, the President of the Council of Europe has now indicated that he is open to dialogue.[71] That offer needs taking seriously.

Conclusion

There is a danger that membership of the Council of Europe becomes a political scapegoat for highly complex regulatory problems of the modern world. Christians might be tempted to sympathise with suggestions that the UK should withdraw because they are generally sceptical towards human rights, worried about excessive individualism or concerned about irregular migration. However, our focus should be both practical and comprehensive. None of us will agree with every single decision, but fundamental human rights have generally proved to be a useful tool in guarding against state overreach and protecting unpopular minorities from social and political hostility. Leaving the ECHR is unlikely to affect the cultural dominance of individualism; it may clip the wings of the judiciary, but the beneficiaries are likely to be public authorities that already enjoy unprecedented discretionary powers; it risks undermining the small but valuable contribution the Council of Europe makes towards civilised governance in Europe; and it jeopardises the protection of religious liberty both at home and abroad.

The UK is not immune from a rising tide of authoritarianism across the world. We cannot afford to forget the lessons of the mid-20th century. So, instead of leaving, we should try to 'bring rights home' again – by carefully interpreting and applying the Convention in the new contexts we find ourselves in, where necessary adopting a more critical stance towards the Court, and doing this not only for our own sakes, but also for those of our European neighbours.

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70 <https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf>. An eminent German judge, Hans-Jürgen Papier, has also recently criticised the interpretative practice of the Court: <https://rmx.news/article/germanys-former-top-judge-under-merkel-says-overzealous-application-of-human-rights-laws-by-echr-endangers-the-existence-of-western-democracies/>. On 18 June 2025, then (Labour) Justice Secretary Shabana Mahmood spoke in Strasbourg of the need for reform in order for states to be able to control their borders: <https://www.gov.uk/government/speeches/lord-chancellor-speech-at-the-council-of-europe>.

71 https://www.bbc.co.uk/news/articles/cpd26yd2759o.

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Next issue: Evangelicals and class

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