Human rights against anti-terrorist laws

Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?

Georg Friðgeir Ísaksson
Lokaverkefni í félagsvísinda- og lagadeild
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Georg Friðgeir Ísaksson
Lokaverkefni til 90 eininga B.A. prófs í félagsvísinda- og lagadeild

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Ég hér með lýsi því yfir að ég er einn höfundur þessa verks og það hef ég gert eftir eigin rannsóknir.

_____________________________________
Georg Friðgeir Ísaksson.

Það staðfestist hér með að lokaverkefni þetta fullnægir að mínun dómi kröfum til B.A. –prófs í félagsvísinda- og lagadeild

_____________________________________
Ágúst Þór Árnason.
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Introduction

Human rights against anti-terrorist laws
Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws?

In this essay I will try to answer the question: Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws? I will focus on the UK, how anti-terrorist laws have been implemented and how they have been used in the UK after the events of the terrorist attacks on 9/11.

Human rights are important to all of us, the freedom of speech, the right to life, the right to dignity, the right to remain innocent until proven guilty, the right to a lawyer, to communicate with your family and several other rights, we are accustomed to are fundamental rights we do not want to be without. With increasing anti-terrorist legislation our rights have been challenged. Anti-terrorist laws have been written frequently since 9/11 and many of them allow governments to detain, question and search people that under normal circumstances would be protected by human rights. It may have been more efficient to compare legislation in different countries in Europe but I choose to focus on the UK.

I chose the UK because of its long tradition of anti-terrorist laws since their dealings with the IRA in the last few decades of the last century. I wanted to take a look at different countries and how they handle the situation, but because of the scale of that research I chose to focus on the UK. I’m not going into details about the anti-terrorist laws before 9/11, but mainly focus on what has happened after 9/11. In the decades before 9/11 the UK government had a lot of cases brought against it for various reasons. How have things changed since the new law was implemented after 9/11? Do they still have a lot of cases brought against them to the European Court of Human Rights concerning violations against basic human rights? And what has the outcome been? Were they found guilty? Or not guilty? I find it interesting to see how many cases have been brought against them and I hope it can give me a clear picture of the subject: Have anti-terrorist laws brought the human rights laws into jeopardy?

In the first chapter I will review the history of human rights laws from 1946, the United Nations, committees, resolutions, charters and organs, and the development since the Second World War. The freedom of speech, the right to life and dignity, the right to remain innocent until proven guilty, the right to a lawyer, to communicate with your family and several other rights we have earned in the last decades from human rights contracts, treaties, resolutions and general comments. The field of human rights has changed a lot, especially after the Second World War. These changes are detailed in the next chapter. Then I will take a look at some of the conventions that have been held because of terrorism.
The second chapter is a closer look at the definition of the term “human rights”, what does it mean? What does the dictionary say about the concept? What are basic human rights according to the United Nations? I will go through a few international bills of human rights. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and some other important protocols that have been drafted afterwards.

To better answer the question Are the human rights laws in jeopardy because of the increasing anti-terrorist laws? I will explain in more detail what terrorism is in the third chapter. I will look at the history of anti-terrorist laws from 1946 and onward, their development, the definition of “terrorism” from the formal point of view and how that definition has developed. Then I want to see how the United Nations define the term ‘terrorism’ and how it has changed from 1946 until today. In 1993 some changes were made in the human rights contracts, treaties, resolutions and general comments. They narrowed the scope of what would be considered terrorism and tried to make it clearer what a terrorist is. After 9/11 they again made new anti-terrorist laws and have made a few since then. I will look at the changes, how it was before and after and try to find out the definition of a terrorist. Have there been many rational changes to the term over the last decades and how have they been implemented?

In the fourth chapter I will concentrate on the UK and how they implement both the anti-terrorist laws and the human rights laws. How has the government used the law in practice? Have there been many cases against the UK? And if there have been, in how many cases were the UK found guilty and in how many were they found innocent? What are the major differences in the cases, what human rights laws, if any, do they break while they apply the terrorist laws and on what ground?

In the fifth chapter I will try to put together the outcome of my findings, and answer the question: Are human rights in the UK in jeopardy because of the nation’s increasing anti-terrorist laws? I hope my essay will shed some light on the subject of human rights laws against anti-terrorist laws. Both anti-terrorist laws and human rights laws were made for a reason but we have to keep our eyes open, because in my opinion, it’s very important to keep up the good work of the human rights movements that has been going on for the last few decades despite the rising threat of terrorist attacks over this last decade.
Chapter one: The United Nations: Basic facts.

In this chapter I will only touch on the subject of basic facts concerning the United Nations, its committees and functions and wide field of issues it addresses every year.

1.1 United Nations.

The United Nations were founded in the year 1945, when representatives from 50 countries met in San Francisco at the United Nations Conference on International Organization to wrap up the United Nations Charter. They came into existence on October 24th 1945, which is now known as the United Nations Day, at the time it had been ratified by China, France, and the Soviet Union, the UK, USA and a majority of other signatories.

The UN charter is the constituting instrument that sets out the rights and obligations of member states and establishes the organizations’ organs and procedures. The main purpose of the United Nations according to the charter is to maintain international peace and security develop friendly relations among nations and cooperate in solving international problems concerning economic, social, cultural and humanitarian matters. The main purpose of the United Nations is also to promote the respect for human rights, fundamental freedoms and the harmonization of the actions of nations to attain these goals.  

1.2. The structures of the United Nations.

The structures of the United Nations are six principal organizations: The General Assembly, Security Council, Economic and Social Council, Trusteeship Council, the International Court of Justice and Secretariat. There are also a few more agencies and under them several programs and bodies that work under their agency. The five countries that have permanent membership and also a right to Veto in the Security Council are France, China, Russia, England and the USA.

All members of the United Nations have agreed that decisions made in the Security Council are to be accepted and carried out. While other organs of the United Nations can make recommendations and such to governments, which they have to take into consideration, the council alone has the power to make decisions that the member states are obligated to carry out under the charter.  

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1 http://www.un.org/aboutun/basicfacts/unorg.htm
2 http://www.un.org/sc/members.asp
1.3 Terrorism.

The first convention on terrorism was held in Tokyo in 1963 and mostly concerned offences and certain other acts on airplanes. Since the year 2001 there have been eleven conferences on terrorism dealing with various issues surrounding terrorist acts. Subsequently there have been a few resolutions on that matter and I will discuss some of them.\(^3\)

In resolution 1373 (2001) the Security Council, under the powers of Chapter VII of the U.N. Charter, required member states to take specific steps in their legislation to combat the scourge of terrorism. It also decides that states shall prevent and punish financing, planning, preparation or perpetration of terrorist acts, also covering suppression of recruitment of terrorists, early warning and information sharing, movement of terrorists and trafficking of arms, explosives and dangerous materials, border controls and the obligation to follow international law when addressing refugee issues, in particular international human rights and humanitarian law.\(^4\)

By July 2002, 164 governments had delivered first reports in compliance with Resolution 1373.122. Not all reports were equal in depth and quality of information. Some outlined patchy and confusing legislative frameworks and various degrees of implementation and enforcement scope, but their fast delivery was quite unprecedented.\(^5\)

1.4 The Security Council.

The Security Council also has a committee called the Counter -Terrorism Committee, founded by the Security Council S/Res/1373(2001) and adopted unanimously on September 28, 2001. With this resolution the council put extra obligation on each nation to criminalize terrorism-related activities and provision of assistance to carry out those acts, denial of funding and safe haven to terrorists and exchange of information on terrorist groups. The committee’s job was to monitor how the states where doing in implementing the resolution and in many cases to facilitate the provision of relevant technical assistance to member states.\(^6\)

In a number of resolutions the council refers to the best practices, codes and standards that can help states to implement the resolution, and in resolution 1377(2001) the council invites the committee to explore ways to how states can be assisted in helping them with international, regional and other organizations, for example in making laws, regarding resolution 1373(2001).\(^7\)

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\(^3\) http://www.fundforpeace.org/publications/reports/keyissues.pdf page 33
\(^4\) http://www.un.org/sc/ctc/bestpractices.shtml
\(^5\) http://www.fundforpeace.org/publications/reports/keyissues.pdf
\(^6\) http://www.un.org/sc/ctc/mandate.shtml
\(^7\) http://www.un.org/sc/ctc/bestpractices.shtml
On September 14th 2005, the council adopted resolution 1624, which deals with incitement of committing act of terrorism and also expanded the committee’s mandate to include monitoring its implementation. It gave the committee the power to monitor other countries and after resolution 1535(2004) it also expanded its activities to making visits to member states.\(^8\)

1.5. Counter-terrorism and human rights since 9/11.

On the subject of counter-terrorism and human rights since 9/11 and the establishment of the Counter-Terrorism Committee, the subject has interested many; how has the council tried to express human rights in their resolutions and how do they follow both laws? In resolution 1373 there’s only one reference to human rights, as it calls upon states to:

“‘Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts.’ But in its preamble it also reaffirms the need to combat by all means in accordance with the Charted of the United Nations threats to international peace and security caused by terrorist acts.’”\(^9\)

The relationship between counter-terrorism and human rights has been strengthened further. In 2003, the Security Council, declared in resolution 1456(2003) that states must ensure any action they take against combats with terrorists must comply with all their obligations under international law, particularly human rights law, refugee law and humanitarian law. And in resolution 1535 (2004) the Security Council approved a change in the Counter-Terrorism Committee by establishing an executive directorate (CTED). His job is to liaise with the Office of the United Nations High Commissioner for Human Rights and other human rights organizations in matters related to terrorism.\(^10\)

\(^8\) http://www.un.org/sc/ctc/mandate.shtml
\(^9\) http://www.un.org/sc/ctc/humanrights.shtml
\(^10\) http://www.un.org/sc/ctc/humanrights.shtml
Chapter two: Definition of human rights.

But what are those laws, treaties, principles and other sources. Where do they come from and what is their purpose? What does the term “human rights” mean? What does the dictionary say about that concept? What are basic human rights according to the United Nations?

2.1 Human rights.

In determining if anti-terrorist laws are clashing with human rights laws, it is necessary to ask the question: What are human rights?
The simplest explanation is probably the one stated in the Oxford dictionary, which says human rights are ““rights which are believed to belong justifiably to every person””.\(^\text{11}\)

But how does the United Nations define the term?

“”Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status.
We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.””\(^\text{12}\)

They also mention that universal rights are often expressed and guaranteed by law, treaties, general principles and other sources of international law. The main function of international human rights law according to the United Nations is to obligate governments to act in certain ways and/or stop them from acting in a certain way in order to promote and protect human rights and fundamental freedoms of individuals or groups. \(^\text{13}\)

2.2. The Universal Declaration of Human Rights (UDHR).

I want to start with the United Nations, Universal Declaration of Human Rights (UDHR), which was accepted at the General Assembly on December 10\(^\text{th}\) 1948. The preamble states, among other things, that recognition of the inherent dignity and the equal and inalienable rights of all human beings is the foundation of freedom, justice and peace in the world.
It also mentions that the freedom of speech and beliefs and the rights to live without

\(^\text{11}\) http://www.askoxford.com/concise_oed/humanrights?view=uk
\(^\text{13}\) http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx
fear is proclaimed to be the highest aspiration of the common people. The preamble also states that human rights should be protected by the rule of law. Then it goes on to the fundamental human rights, the dignity and worth of a human person, equal rights for men and women, and the fundamental freedoms.14

The Universal Declaration of Human Rights (UDHR) was drafted as “a common standard of achievement for all peoples and nations”. The Declaration, for the first time in human history, spells out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so-called International bill of human rights.15

When reading the declaration itself, the first article says that all human beings are born free and equal in dignity and rights, article two mentions that everyone has a right to all the rights and freedom mentioned in the declaration, regardless of race, color, sex, language, religion, political opinions, national or social origin, property, birth or status. Article three states that everyone has a right to life, liberty and the security of their person.

Article four prohibits slavery, article five says no one should be tortured, treated or punished cruelly or in an inhuman and degrading way. Article six is about everyone’s right to recognition before the law; article seven is about everyone’s equality before the law, equal protection of the law, and equal protection against any violation of the declaration and against any incitement of discrimination. Article eight says everyone has the right to effective remedy by competent national tribunal for acts violating the fundamental rights granted by constitutions or law. Article nine states no one should be subject to arbitrary arrest, detention or exile. Article ten says everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal in determining his rights and obligations and of any criminal charge brought against him.16

Then there is article eleven, about everyone’s right to be presumed innocent until proven guilty according to law, in a public trial and provided with a defendant. Section two states that no one can be found guilty of something that was not an offence according to national and international law at the time committed and the penalty shall not be higher than at the time when said offence was committed.17

15 http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx
There are nineteen more articles in the declaration; the next one is regarding privacy, at home and the family, honor and reputation. Then there is one about the freedom of movement to and from a country, the right to seek asylum from prosecutions, right to a nationality, the right to marry and start a family, the right to own property, freedom of thought, consciousness and religion, freedom of opinion and expression, right to peaceful assembly and association, right to equal access to public service, right to social security, right to work, the right to equal payment for equal work, right to join trade unions, right to rest and leisure, including reasonable limitations of working hours and holidays with pay, right to food, housing, clothing, medical care and the necessary social services, the right to security in the event of unemployment, sickness disability, old age and any other circumstances beyond his control. Then there is the right to education, participate in the cultural life of society, right to social and international order according to the treaty and duties to the community. In those rights and duties the only subject to limitations is by law, solely for the purpose of security, but the law has to recognize and respect the rights and freedoms of others and must meet the requirements of moral public order and general welfare of the democratic society.18

Then the last article states that:

“Nothing in this declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”19

Following that declaration, we have the International Covenant on Civil and Political Rights, and its two optional protocols, and the International Covenant on Economic, Social and Cultural Rights which were adopted on December 16th 1966. Their preamble states that:

“Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, recognizing that these rights derive from the inherent dignity of the human person, recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”20

20 http://www2.ohchr.org/english/law/cescr.htm
2.3. Since the Universal Declaration of Human Rights.

There have been a few more treaties since the Universal Declaration of Human Rights and now there are nine basic international human rights treaties. Each treaty establishing a committee of experts to monitor implementation of the treaty provisions by its State parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns. 21

In addition to the International Bill of Rights and the basic human rights treaties, there are many other universal instruments relating to human rights. The legal status of these instruments varies: declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to states in their conduct. Covenants, statutes, protocols and conventions are legally-binding for those states that ratify or accede to them. 22

21 http://www2.ohchr.org/english/law/index.htm#core
22 http://www2.ohchr.org/english/law/index.htm#core
Chapter three: Definition of terrorism.

3.1 Terrorism.

But what do the words ‘terrorist’ and ‘terrorism’ mean? The Oxford dictionary defines the word ‘terrorist’ as “a person who uses violence and intimidation in the pursuit of political aims.”

The Britannica encyclopedia uses this definition of the word ‘terrorism’:

“The systematic use of violence to create a general climate of fear in a population and thereby to bring about a particular political objective.”

At Wikipedia I found a slightly different view of the term terrorism, they say the word means ‘systematic use of terror especially as a means of coercion’, but they also refer to the common definition which according to them is:

“Those acts which are intended to create fear (terror), are perpetrated for an ideological goal (as opposed to a lone attack), and deliberately target or disregard the safety of non-combatants.”

They also state that the word ‘terrorism’ has been used in around hundred different situations according to a scientific study from 1998. They also mention how the term is politically and emotionally charged and its controversy since it is often used by states to delegitimize political or foreign opponents and potentially legitimize the state's own use of terror against them. Terrorism is practiced by many political organizations and groups, for example left and right wing political parties, nationalistic groups, IRA and other similar organizations, religious groups, revolutionaries and ruling governments.

Then we have something called Eco-terrorism, also called green terrorism, which is terrorism committed in support of ecological, environmental or animal rights causes. This form of terrorism is not usually considered a violent crime, but some have described actions by those groups violent and an act of terrorism.

Usually each act of terrorism is made with the goal to have a large psychological impact on as many people as possible and they do so by attacking national symbols,

23 http://www.askoxford.com/concise_oed/terrorist?view=uk
24 http://www.britannica.com/EBchecked/topic/588371/terrorism
26 http://en.wikipedia.org/wiki/Terrorism
28 http://en.wikipedia.org/wiki/Terrorism
train stations and other popular and public places of that caliber to show power and shake the foundations of the state or nation. Many acts of terrorism are for political purposes. Sometimes it’s a combination of politics and religion, for example the struggle in Israel for the holy land. Commonly it is claimed that the nature of terrorism is to attack, intentionally and specifically, civilians and use them as direct targets.

Key criteria of terrorism are, according to Walter Laqueur of the Center for Strategic and International Studies: “The only general characteristic of terrorism generally agreed upon is that terrorism involves violence and the threat of violence.” But this is not in fact a very good or useful definition, since a lot of actions like war, riot, organized crime and assault are an act of violence but not terrorism. 29

The most widely accepted contemporary usage of the term ‘terrorism’ is fundamentally and inherently political. It is also definitely about power: the pursuit of power, the acquisition of power, and the use of power to achieve political change. Terrorism is thus violence – or, equally important, the threat of violence - used and directed in pursuit of, or in service of, a political aim. With this vital point clearly illuminated, one can appreciate the significance of the additional definition of “terrorist” provided by the OED: “Anyone who attempts to further his views by a system of coercive intimidation”. This definition underscores clearly the other fundamental characteristic of terrorism: that it is a planned, calculated, and indeed systematic act. 30

In his book “Inside Terrorism” Bruce Hoffman wrote in Chapter One: Defining Terrorism that:

“On one point, at least, everyone agrees: terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponents, or to those with whom one disagrees and would otherwise prefer to ignore. “What is called terrorism, “Brian Jenkins has written, “thus seems to depend on one's point of view. Use of the term implies a moral judgment; and if one party can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint.” Hence the decision to call someone or label some organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned. If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive (or, at the worst, an ambivalent) light; and it is not terrorism.”31

29 http://en.wikipedia.org/wiki/Terrorism
3.2. Conventions since 1946.

But what is the international framework's definition of the term terrorism? Let’s look at some of the institutions and organizations. Terrorism is not a new phenomenon in Europe, since the Second World War there have been e.g. the IRA in Ireland and ETA in Spain. Even before then the term was known, but I want to find out what the definition of the term ‘terrorism’ is nowadays and what the statutes, resolutions, conventions, protocols and other agreements say regarding the term. There have been a few conventions since 1945, as this list of conventions held in the last century proves:

1. 1961 Vienna Convention on Diplomatic Relations;
2. 1963 Vienna Convention on Consular Relations;
3. 1963 Convention on Offenses and Certain Other Acts Committed On Board Aircraft (Tokyo Convention, agreed 9/63—safety of aviation);
4. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16\textsuperscript{th} 1970;
5. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on September 23\textsuperscript{rd} 1971;
7. International Convention Against the Taking of Hostages, adopted in New York on December 17\textsuperscript{th} 1979;
11. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10\textsuperscript{th} 1988;
12. International Convention for the Suppression of Terrorist Bombings, adopted in New York on December 15\textsuperscript{th} 1997;

13. International Convention for the Suppression of the Financing of Terrorism, adopted in New York on December 9\textsuperscript{th} 1999. \textsuperscript{32}

All the conventions take on a specific subject of terrorism but they do not specifically define what the term ‘terrorism’ means.

During this century there have also been a few more conventions: On September 28\textsuperscript{th}, 2001 United Nations Security Council Resolution 1373 adopted under Chapter VII of the United Nations Charter, which makes it legally binding to member states. Among other provisions, it favoured the exchange of intelligence between member states and legislative reforms. It established the Counter Terrorism Committee (CTC) to monitor state compliance with its provisions. The large majority of member states have subsequently adopted anti-terrorism legislation in order to comply with the resolution. Later resolutions concerning the same matter were Resolutions 1390, 1456, 1535 (which restructured the CTC), 1566, and 1624. \textsuperscript{33}

Then there is the International Convention for the Suppression of Acts of Nuclear Terrorism New York, adopted by the General Assembly of the United Nations on April 13\textsuperscript{th} 2005 \textsuperscript{34}

### 3.3. The Council of Europe.

The Council of Europe has had three major events concerning conventions related to terrorism and counter-terrorism, which are: the 1977 European Convention on the Suppression of Terrorism (Strasbourg, January 1977), the 2003 Protocol (Strasbourg, May 2003), and the 2006 Council of Europe Convention on the Prevention of Terrorism.\textsuperscript{35}

All those conventions and protocols have a common factor: they all concern terrorism in several ways but not one of them explicitly defines what terrorism is, since it can be so many things. It can be pretty hard to define terrorism, there are several kinds of terrorism in so many fields, but I hope this gives the general idea about of it.

\textsuperscript{32} http://en.wikipedia.org/wiki/Anti-terrorism_legislation#European_Court_of_Human_Rights_cases_related_to_anti-terrorist_legislation  
\textsuperscript{33} http://en.wikipedia.org/wiki/Anti-terrorism_legislation#European_Court_of_Human_Rights_cases_related_to_anti-terrorist_legislation  
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\textsuperscript{35} http://en.wikipedia.org/wiki/Anti-terrorism_legislation#European_Court_of_Human_Rights_cases_related_to_anti-terrorist_legislation
Chapter four: The United Kingdom, human rights and the anti-terrorist laws.

4.1. Human rights and the anti-terrorist laws.

In chapters two and three I looked at the definitions of human rights and terrorism but now I want to find out what terrorism means in the UK. How is it used in the UK and how it is used in practice? Then I want to see if there have been many cases brought against the UK in the international courts, what has the outcome been in those cases, and what laws, if any, were broken in those cases and on which ground?

4.2. The United Kingdom.

I want to start by looking at the law of terrorism in the UK after the Second World War. There has been some form of terrorist law before the last century but I’m not going to take those into account since so many things have changed since then. Ever since the Second World War there have been anti-terrorist laws in effect in the UK since the IRA in Ireland started their terror campaign against the UK in Northern Ireland. Those laws were ‘the Prevention of Terrorism Acts’, a series of acts by the parliament of the United Kingdom from 1974-1989. They were based on a bill from 1939 that was called ‘the Prevention of Violence Act’. That bill was active from 1939 to 1953 and was repealed in 1973 to become this new terrorism act in 1974.36

In 1975 the British government amended the 1973 Act and three years later consolidated the two statutes into the 1978 EPA. Further replacements in 1987, 1991, and 1996 did little to change the content of the earlier acts, except to expand certain powers and allow a small number of others to lapse. The rationale behind the retention of the 1973-96 EPA's changed subtly: they became seen as a critical part of the ongoing fight against terrorism.37

The 1973 EPA retained the government’s extensive powers of detention, proscription, entry, search and seizure, restrictions on the use of vehicles, the blocking up of roads, the closing of licensed premises, and the collection of information on security forces. In addition the statute eliminated juries from the court system and established certain crimes as “‘scheduled” offenses, regardless of the perpetrator’s motivation. It also retained the general powers allocated to the Civil Authority in Northern Ireland, authorizing that the secretary of state for Northern Ireland “may by regulations make provisions additional to the

36 http://en.wikipedia.org/wiki/Prevention_of_Terrorism_Act_%28Northern_Ireland%29
37 http://www.hks.harvard.edu/taubmancenter/pdfs/working_papers/donohue_00_civillib.pdf, page 4-5
foregoing provisions of this Act for promoting the preservation of the peace and the maintenance of order.”

4.3. Laura K. Donohue

Laura K. Donohue wrote an essay in August 2000 called ‘Civil Liberties, Terrorism, and Liberal Democracy: Lessons from the United Kingdom’ and on page 40 in her conclusions, she says that terrorist violence was fluctuating throughout the twentieth century in the United Kingdom. Sometimes when the level of terrorism sharply increased, the Northern Ireland and British governments were placed under severe pressure to enact counter-terrorist measures. Although such provisions were to some extent effective, there were some significant costs, with regard to civil liberties. She also says that when violence linked to terrorist attacks decreased, the government did not repeal emergency measures. Factors playing a role in maintaining emergency law, both in the face of immediate violence and in its aftermath, are not singular to the UK. In adopting counter-terrorist law, countries need to be cognizant of both the possible domestic impact of counterterrorist measures and elements forcing temporary measures into permanent entrenchment in domestic law.

From the time the act was repealed until 2000, there were a lot of cases that came to the international courts, some of which they won and some of which they lost. I’m not going into those cases in detail, but I’d like to mention the Ireland v. United Kingdom - 5310/71 [1978] European Court of Human Rights (ECHR) 1 (18 January 1978) on December 13th 1977, the court ruled that the government of the United Kingdom was guilty of “inhuman and degrading treatment” of men interned without trial, following a case brought by the Republic of Ireland. The Court found that while their internment was a violation of the conventional rights, it was justifiable under the circumstances. It however ruled that the practice of the five techniques and the practice of beating prisoners constituted inhumane and degrading punishment in violation of the convention, although not torture. This is but one of many cases brought against the United Kingdom during that period.

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38 http://www.hks.harvard.edu/taubmancenter/pdfs/working_papers/donohue_00_civillib.pdf, page 4-5
39 http://www.hks.harvard.edu/taubmancenter/pdfs/working_papers/donohue_00_civillib.pdf, page 44
40 http://www.bailii.org/eu/cases/ECHR/1978/1.html
4.4. Interpretation of the term Terrorism.

Now to the laws made after 1999 and the cases issued after those laws were passed. The first one was the Terrorism Act 2000, legislation that took over from the Prevention of Terrorism (Temporary Provisions) Act 1989, and the Northern Ireland (Emergency Provisions) Act 1996.\(^{41}\)

In the act they defined to some extend what is terrorism:

**Terrorism: interpretation**

— (1) in this Act “terrorism” means the use or threat of action where—

(a) the action falls within subsection (2),
(b) the use or threat is designed to influence the government or an international governmental organization or to intimidate the public or a section of the public, and
(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,
(b) involves serious damage to property,
(c) endangers a person’s life, other than that of the person committing the action,
(d) creates a serious risk to the health or safety of the public or a section of the public, or
(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

(a) “action” includes action outside the United Kingdom,
(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
(d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organization.

For the first time there was legislation that gave a broad definition of terrorism, also providing an extended list of proscribed terrorist organizations beyond those associated with Northern Ireland. And that allowed police to detain terrorist suspects for questioning for up to 7 days.\(^{42}\)

\(^{41}\) http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1851852

\(^{42}\) http://en.wikipedia.org/wiki/Terrorism_Acts
The laws have been criticized for allowing excessive police powers leaving scope for abuse. There have been various cases in which the laws have been used in scenarios criticized for being unrelated to fighting terrorism. Critics allege there is systematic abuse of the act against peaceful protesters, so let’s see a few examples. October 17th 2005. According to the Times online, Sally Cameron, a 34-year-old property developer with her year-round tan, long blonde hair and designer clothes joined the ranks of Britain’s most unlikely terrorist suspects after being held for hours for trespassing on a cycle path. That certainly does not look like a threat to national security.43

Not all people were happy with this piece of legislation, for example professor Clive Walker of the University of Leeds that commented in 2002 that: “The Terrorism Act 2000 represents a worthwhile attempt to fulfill the role of a modern code against terrorism, though it fails to meet the desired standards in all respects. There are aspects where rights are probably breached, and its mechanisms to ensure democratic accountability and constitutionalism are even more deficient.”44

4.5 After 9/11

Everything changed after 9/11, both domestically and internationally regarding anti-terrorist laws. The United Nations wrote resolution 1373(2001) that I mentioned earlier, and shortly after that the UK wrote another legislation on anti-terrorism named the Anti-terrorism, Crime and Security Act 2001, written on December 14th 2001. The main change was that it contained measures previously rejected from the 2000 act. Additional provisions on weapons of mass destruction, requiring disclosure of suspected terrorist financing activities, measures to improve the security of pathogens and toxins, powers to inspect premises and deny access to specified persons, additional powers of arrest in, and removal from, aircraft and airports, wider powers in respect of the regulation of aviation security and enhanced powers to detain aircrafts, provision for the retention of communications, traffic data, creation of an offence of using noxious substances to harm or intimidate (there is also provision in relation to hoaxes involving harmless substances), asset freezing powers where an individual, entity or country poses a risk to the UK economy, the life or property of UK nationals or residents. It allowed the Ministry of Defense Police to operate outside military bases even for non-terrorist cases, in part 4 it enabled foreigners to be detained as terrorist suspects indefinitely and it required annual renewal of some provisions in recognition of the political climate.45

43 http://www.timesonline.co.uk/tol/news/uk/article579334.ece
44 The Anti-Terrorism Legislation (Oxford University Press, Oxford, 2002
45 http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/4_theme_files/apologie_-_incitement/CODEXTER%20Profiles%20%282007%29%20UK%20E.pdf
The next legislation written in Parliament was the Criminal Justice Act 2003. In it the period of detention of a terrorist suspect for questioning was extended to 14 days from 7 days. The action was justified by claiming forensic analysis of chemical weapon materials might not be complete in 7 days.

After that came the Prevention of Terrorism Act 2005, whose main changes were the “control order”, which is a form of house arrest. This spawned 50+ hour disputes in Parliament, but was passed just in time to become applied to the part 4 terrorist suspects. The next act was drafted after the July 7th 2005 London bombings. It was named The Terrorism Act 2006, which defines the offence of “glorifying” terrorism, revising the period of detention of terrorist suspects without charge up to 28 days. In the drafts, the government asked for this to be 90 days, but that request was defeated in a parliament vote.

They tried to justify this by the claim that necessary evidence to decide charges might be encrypted on one of thousands of hard disks, and it could take this long to search them, but they did not succeed in getting it approved by the parliament. The main changes in the latest act, the Counter-Terrorism Act 2008 allow police questioning of suspects after they’ve been charged, and requires convicted terrorists to notify the police of their whereabouts (similar to existing requirements for sex offenders). The highest profile provision in the Counter-Terrorism Bill was a measure to allow terrorist suspects to be detained by police for up to 42 days before being charged and it was also interpreted as banning all photographs of the police in public places.46

4.6 Human rights

Next I’m going to look at the Human rights legislation in the United Kingdom, it’s development and how it is today. The parliament in the United Kingdom has a principle called the Principle of State Sovereignty. It’s very important to take into account that even if the international community like the United Nations or the European Union make a regulation or a declaration or any other kind of contract, the parliament in the United Kingdom has to bring it forth in parliament and accept it to make it valid, according to the tradition in the United Kingdom. The UK played an important role in drafting of the convention, United Nations Universal Declaration of Human Rights of December 10th 1948, as well as establishing a European Court and Commission of Human Rights. The UK was one of the first states that signed the Convention on March 8th 1951 and one of the first to ratify it with effect from September 1953, but no domestic legislation was introduced and no attempt was made to implement the rights into United Kingdom law until the passing of the Human Rights Act 1998. The right to petition the European Court was eventually allowed in 1966.47

47 http://en.wikipedia.org/wiki/Human_rights_in_the_United_Kingdom
With the exception of non-derivable human rights (international conventions class the
right to life, the right to be free from slavery, the right to be free from torture and the
right to be free from retroactive application of penal laws as non-derivable), the UN
recognizes that human rights can be limited or even pushed aside during times of
national emergency – although the emergency must be actual, affect the whole
population and threat must be to the existence of the nation, and the declaration must
also be a temporary measure and a last resort.48

The Human Rights Act 1998 was successfully negotiated by the Commons and the
Lords and it entered into force on October 2nd 2000. The Act seeks to give direct
effect to the European Convention on Human Rights in domestic law, thereby
enabling claimants to bring an action directly before United Kingdom courts instead
of having to take their case to the European Court of Human Rights, as had
previously been the case.
The Act makes it unlawful for a public body to act contrary to certain rights
prescribed by the Convention, and allows the court in the United Kingdom to award a
remedy in the event of a breach.49

4.7 Cases

By 2004, the European Court of Human Rights had, in 130 cases, found violations of
the European Convention of Human Rights by the United Kingdom. These judgments
cover a wide variety of areas, from the rights of prisoners to trade union activities.
The decisions have also had a profound effect and influence on the approach adopted
by the UK to the regulation of activities which could potentially engage Convention
rights.50

In the European Court of Human Rights case law, I found around 20 cases that have
been brought to court concerning the UK and terrorism. I want to add that they did
not lose in all of them, but I’m going to take a look at a few. I’m not going into them
all in specific detail, but didn’t find any other country with as many cases brought
against them concerning this subject than the United Kingdom.

I want to single out a case from February 2009 because it happened recently. It is the
case of A. and Others v. the United Kingdom. On February 19th 2009, the Grand
Chamber of the Court held unanimously that there had been a violation of right to
liberty and security, a violation of right to have lawfulness of detention decided by a
court, and violation of right to be compensated for such violations. The case
concerned the applicants’ complaints that they were detained in high security
conditions under a statutory scheme which permitted the indefinite detention of non-nationals certified by the Secretary of State as suspected of involvement in terrorism. The applicants were 11 individuals, six of Algerian nationality; four, respectively, of French, Jordanian, Moroccan and Tunisian nationality, and one born in a Palestinian refugee camp in Jordan, and thus stateless. The Court made awards under Article 41 of the European Convention on Human Rights (just satisfaction) which were substantially lower than those made in past cases of unlawful detention. In view of the fact that the detention scheme was devised in the face of a public emergency and as an attempt to reconcile the need to protect the United Kingdom publicly against terrorism with the obligation not to send the applicants back to the countries where they faced a real risk of ill-treatment. The applicants got paid amounts from EUR 1700 to 3900 and in addition would get jointly EUR 60,000 for costs and expenses, plus any tax that might be charged to the applicants.51

There’s also one particular case I’d like to mention, the incident when the UK government implied the Anti-terrorism, Crime and Security Act 2001 against the Icelandic bank Landsbanki. In October 2008, prime minister Gordon Brown invoked this part of the Act within the Landsbanki Freezing Order 2008 to freeze the British assets of Icelandic bank Landsbanki during the Icelandic financial crisis, by virtue of the fact that the Treasury reasonably believed that “action to the detriment of the United Kingdom's economy (or part of it) has been or is likely to be taken by a person or persons.”52

### 4.8 Section 44

**Power to stop and search**

**Section 44 Authorizations**

(1) An authorization under this subsection authorizes any constable in uniform to stop a vehicle in an area or at a place specified in the authorization and to search—

(a) the vehicle;

(b) the driver of the vehicle;

(c) a passenger in the vehicle;

(d) anything in or on the vehicle or carried by the driver or a passenger.


(2) An authorization under this subsection authorizes any constable in uniform to stop a pedestrian in an area or at a place specified in the authorization and to search—
(a) the pedestrian;
(b) anything carried by him.

(3) An authorization under subsection (1) or (2) may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.

(4) An authorization may be given—
(a) where the specified area or place is the whole or part of a police area outside Northern Ireland other than one mentioned in paragraph (b) or (c), by a police officer for the area who is of at least the rank of assistant chief constable;
(b) where the specified area or place is the whole or part of the metropolitan police district, by a police officer for the district who is of at least the rank of commander of the metropolitan police;
(c) where the specified area or place is the whole or part of the City of London, by a police officer for the City who is of at least the rank of commander in the City of London police force;
(d) where the specified area or place is the whole or part of Northern Ireland, by a member of the Royal Ulster Constabulary who is of at least the rank of assistant chief constable.

(5) If an authorization is given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.\(^53\)

An 11-year-old girl was required to empty her pockets before being handed a notification slip under the Act, one of more than 1,000 issued to protesters. In July, a cricketer on his way to a match was stopped at King’s Cross station in London under Section 44 powers and questioned over his possession of a bat. The police thought he might be travelling to Scotland to cause trouble at the G8 summit. Maybe that could have been true. But why use anti-terror laws for what was a potential public order offence at worst? In the financial year after the Act came into force, which included the period of the September 11 attacks on New York and Washington, there were 8,500 stops and searches under the Act. The following year, there were 21,500 and for the financial year 2003-04, the last for which figures are available, there were 29,407.\(^54\)

\(^53\) http://www.opsi.gov.uk/acts/acts2000/ukpga_20000011_en_5#pt5-pb1
\(^54\) http://www.telegraph.co.uk/comment/personal-view/3620110/The-police-must-end-their-abuse-of-anti-terror-legislation.html
Of course there is a balance to be kept between ensuring that the police have effective counter-terrorism powers and the freedom of the citizen to go about his daily business unmolested. There are times when exceptional measures are warranted to override the normal expectation that the police will intervene in our lives only if there is reasonable suspicion of a crime being committed. But it is wrong to use them to stifle lawful protest.\textsuperscript{55}

The British government invoked the Anti-Terrorism Crime and Security Act 2001 to freeze the British assets of Landsbanki, something for which Brown refused to apologize, stating he had a responsibility to recover the assets in the most effective way possible. Referring to the move, then Icelandic Prime Minister Geir H. Haarde said: “I told the chancellor that we consider this to be a completely unfriendly act.” \textsuperscript{56}

It would have been very interesting to see what had happened if the Icelandic government on behalf of the Landsbanki would have filed a case against the government of the United Kingdom for using the Act in this way on a business company of a nation that is friendly and in no way connected to terrorism in any way.

\textsuperscript{55} http://www.telegraph.co.uk/comment/personal-view/3620110/The-police-must-end-their-abuse-of-anti-terror-legislation.html
\textsuperscript{56} http://www.guardian.co.uk/business/2008/oct/10/banking-iceland
Chapter five: Are human rights in jeopardy because of the increasing anti-terrorist laws in the UK?

After having looked at both antiterrorist laws and human rights laws I have learned a great deal about each category even though I could not go into all the details I wanted to in each case. I also tried to find the definition of each term, and found out that they are various, they are not always clear and people do not always agree on what they are concerning the anti-terrorist definition but the human rights definition was a little clearer.

I covered most of the Universal Declaration of Human Rights (UDHR) articles and covered most of them but skipped others, not because they are less important but because it would expand the concept of this essay to write about them all in detail. There are more that could be significant in regards to the human rights issue, but I hope I have at least managed to shed some light on the definition of human rights.

Human rights law and anti-terrorist laws have completely different agendas. One is written to guard the individual from harm from the government or any other person that wants to limit or break his or her right as a person. Anti-terrorist laws are on the other hand made to fight terrorism, to keep the nation safe in times of emergency, when action of terrorism threaten the entire nation and cause public fear and panic.

In my readings of the situation in the UK in the past and how it’s developed since the 9/11 terrorist attacks, I found there have been many cases where the UK has lost and been found guilty of violating against the human rights law. Before the 1998 Human Rights Act there were no human rights laws that had gone through the parliament and as I mentioned before, in the UK everything has to go through parliament to be accepted as law because of the parliamentary sovereignty.

The Human Rights Act that came into action in 2000 changed a lot of things. The public was able to bring actions straight into courts in the UK; they could get remedy from the courts in the UK in cases of personal violation of their rights. From the year 2000 to 2004 there were 130 cases brought to the European Court of Human Rights against the UK for violation of the Human Rights Act which they lost and in my opinion that’s a lot in only 4 years. Even though there were in various areas of law that all the cases referred to, they give a good example of the situation in the UK regarding human rights.

I found it very interesting to look at the history of the United Kingdom and see what’s happened in the recent years when they approved all these new terrorism laws and
implemented them into their legislation. The more acts they approved, the more human rights they seemed to come up against. For example: The permission to keep terrorist suspects in detention without being charged for up to 42 days by the police. There are more changes I found that seem to be broken a lot, especially the Section 44 act. In the first year after the act was set, it was used 8500 times, the year after around 21,500 times and the year after that, 29,407 times, increasing every year.

That is a vast increase of incidents by year and in my opinion many of those actions by police are a violation of the Human Rights Act, many of them borderline ridiculous, as in stopping an 11 year old girl for questioning and the cricketer mentioned earlier, on his way to a match.

Then there is the issue of the Icesave accounts, where the UK Prime Minister used the terrorist legislations on Landsbankinn and Iceland, a country that at the time he put the legislation into force, was a friendly nation and in no way a terrorist force. In my opinion that’s a clear violation of the law and I’d have liked to have seen it taken to court, just to see what the outcome of the case would have been.

In my opinion the increasing anti-terrorist legislation put more and more human rights in jeopardy, with increasingly more human rights articles broken with the issue of stricter and more flexible terrorist laws giving the government and police greater power to detain people without questioning. These legislations give them the power to stop and search people whenever and wherever they want to and increase the number of days allowed to hold a terror suspect without charges from 7 days to 42 days. All this changes in the space of just a few years. Therefore my conclusion based on my findings on the situation in the United Kingdom is that the anti-terrorist laws are putting more and more human rights into jeopardy.
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