

## Luxembourg, Strasbourg, human rights and the future

Draft for Slynn Foundation 17.3.2014

In my private life and as a judge both in Luxembourg and in Strasbourg I have come across those who have lived under dictatorships. Their speech has been restrained, their phones have been tapped, people have been imprisoned without proper trial and so on. Persons who have been through such experiences do not wish to return to dictatorships. It surprises many Englishmen that so many people on the Continent welcome the help of the Luxembourg and Strasbourg courts in making such a return less likely. It has become clear to me that those who have been freed from dictatorship feel very strongly about the positive desirability of a public pronouncement of violations of human rights by institutions outside their national borders. The Slynn Foundations is very familiar with this as a result of years of work in such countries.

In total contrast to this many of my friends in England object strongly to the European Convention, the Charter of Fundamental Rights of the EU and the Human Right Act.

Some object to some of the rights proclaimed in those instruments. Those rights vary from the less controversial, say the prohibition of torture, to the more controversial, say the right of access to placement services. I say nothing about this aspect for the moment. Others object to a particular decision, say the decision that beating schoolchildren against their parents wishes is contrary to their human rights, a decision which the speaker considers should have gone the other way. Again, I say nothing about that - save to make three points. First, in many situations in life whatever decision one makes brings with it some advantages and

some disadvantages. It is not enough to point out the undoubted disadvantages. The argument is about where the balance should be struck; what advantages can be dispensed with; what disadvantages are intolerable. My second point is that views about where the balance should be struck will vary from place to place, time to time and person to person. It is not surprising that the starting position, the instinctive position, should be different for one who has escaped dictatorship from that which comes naturally to one who lives in a country which has not experienced such dictatorship in living memory. My third point is that the Court's decision has to take into account not merely the situation of a particular litigant in a particular country but that its decision will guide courts in all of the signatory countries.

These questions I put aside for now. What I am concerned to address is the hostility of those who object in principle to any control by any European Institution (not subject to our national veto) over any decision which has been taken by one of our national institutions - be it Parliament, a minister or a court. I regard this hostility as misguided for two distinct reasons. The first goes way beyond human rights; The second is specifically concerned with human rights.

My more general point is that it is an unavoidable fact of life that, in many fields, we are affected by decisions made by others and by activities which take place outside our borders. If a nuclear installation in France blows up it is inevitable that we will suffer some of the consequences - we learned this from Chernobyl. If the Euro is under pressure that inevitably affects our trade, our currency and our wealth generally - even though we are not members of the Eurozone. We learned this within the last few years. If another country raises tariffs against goods which we wish to export then our

exports are manifestly disadvantaged, and so on and so on. So, given that we can not avoid being influenced by the actions or inactions of others, there is much to be said for being in a position to influence those others and to try and persuade them not to do that which harms us. Now, it is a fact of life that if we wish to be in a position to influence others then this implies that they will want to be in a position to influence us. Thus if we want to have some say in the safety precautions to be adopted in French nuclear installations then we must allow the French some say in the safety precautions to be adopted in our nuclear installations. That is what Euratom is all about. It seems to me that the price of the aspects of independence which we lose by virtue of our membership of the EU and of the Council of Europe is more than compensated for by the influence we gain over the decisions of others.

I wish to make two human rights points. The first is that Europe (in which I include the UK) is a safer place for all its citizens if the human rights of each of its citizens are respected. In general violently aggressive action against foreigners is less likely to be started if there is free voting, openness, free speech, free movement between countries and a climate of opinion in which foreigners, as human beings, are accepted as having some human rights which others should not violate. I would want to foster such a climate of opinion.

My second human rights point is that Europe is a continent with a long tradition of reflection on what should be honoured in the humanity of other people. We have learned much from our successes and our failures. Yet history shows us that politicians in individual countries from time to time under their peculiar national, temporal, and personal pressures initiate actions which are later seen as inexcusable but at the time to those people seem reasonable. Germans,

Frenchmen and Englishmen and so on have learned from each other so that what seemed reasonable to many Germans in Hitler's Germany, what seemed reasonable to many Frenchmen at the time of the struggle for Algerian independence, and what seemed reasonable to many Englishmen about our treatment of and occasional execution of prisoners does not seem so acceptable now. I consider that the advantages in having an independent outside body which is shielded from acute temporal pressures and can take a longer term view significantly outweigh the disadvantages attendant upon such a situation

As to the future, I would hope that we examine as carefully and soberly as we can what identifiable gains would arise from our quitting the Council of Europe and the European Union and what on the other hand we would lose from so doing. My emphasis would be on the particular rather than on reflections on doctrines of sovereignty. Charles I played a part in starting a very bloody civil war and lost his head because of his inflexible attachment to an abstract doctrine of sovereignty. Such an attachment seems equally to have been present in the character of William II of Germany who also played a part in starting a very bloody war.

For my part I would also regard as a relevant question what are the identifiable gains for Europe as a whole and what would Europe as a whole lose from our quitting these institutions. Again, my own assessment is that Europe would lose more than it would gain if we were to quit.

So I am against the risks attendant upon paddling our own canoe.

