

Brexit and the Future of the European Convention on Human Rights

Written by Mette Eilstrup-Sangiovanni

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Britain's exit from the European Union does not directly impact the country's status as a signatory to the European Convention on Human Rights (ECHR). The ECHR is an international human rights treaty agreed by the forty-seven members of the European Council and enforced by the European Court of Human Rights, which is distinct from the EU. Although the question of EU membership and the UK's status as signatory to the ECHR were often conflated during the campaign on the British EU referendum, Brexit therefore cannot be understood to give a go-ahead to leave the Convention. Indeed, since the June 2016 referendum, the UK Conservative party has backpedaled on its commitment to seek a withdrawal from the ECHR. As it stands, British citizens will therefore still be able to invoke their rights under European Convention in domestic courts, and to lodge cases before the European Court of Human Rights after Brexit takes effect.

Nonetheless, as the three contributors to this symposium—Dr. Tobias Lock, Dr. Jonathan Cooper OBE and Prof. Steven Greer—point out, the EU is often closely associated with the ECHR in British public debate. As Jonathan Cooper observes in his contribution, the ECHR has long served as a popular 'whipping boy' for British Euro-skeptics. During the referendum debate, Theresa May announced that she thought Britain would be better served by leaving the ECHR than by leaving the EU. While the decision to drop the pledge to pull out of the ECHR from the Conservative party manifesto takes the issue off the table for the immediate future, the danger has far from passed. As Tobias Lock argues in his blog-post, there is an obvious and persistent danger that the ECHR will be used as a scapegoat if Brexit does not turn out to be 'hard' enough to satisfy diehard euro-sceptics within the conservative party and elsewhere. In this context, Brexit raises a deep concern: Being a signatory to the ECHR is a pre-condition for becoming a member of the EU. In addition, the EU has its own Charter of Fundamental Rights which applies to its institutions and member states, and the Union is renowned for making respect for human rights a center-piece of its diplomatic dealings with countries around the world. Although leaving the EU does not entail expulsion from the ECHR, Brexit therefore removes a central obstacle to seeking a withdrawal from the Convention and may simultaneously weaken obstacles to rowing back Britain's commitment to other international human rights agreements.

Implications may run in the other direction too. As one of ten founding members of the Council of Europe, Britain was one of the first countries to ratify the ECHR in 1951, and the country has historically been regarded as an important champion of human rights internationally. UK withdrawal from the EU and—were this to happen—the ECHR might embolden populist leaders across Europe and farther afield to abandon commitments to human rights protections. As the Brexit negotiations unfold, it is therefore important to keep up pressure on the UK Government to permanently drop the ambition of seeking Britain's withdrawal from the ECHR.

I am most grateful to the three distinguished contributions to this symposium for clarifying the issues at stake and sharing their views on what may lie ahead.

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About the author:

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