

Perspectives in Human Rights law and Peaceful Protest

Stephanie Tam

Durham University, Durham, United Kingdom

Abstract

The protection of civil rights underpins democratic progress of government. This paper considers how citizens are protected by law and how the right to peaceful protest is defined in the United Kingdom by examining the impact of the Human Rights Act (HRA) 1998 and Articles 10 and 11 of the European Convention on Human Rights (ECHR) on freedom of assembly. The author discusses whether civil rights should be granted protection in terms of peaceful protests and if so the effective means and the level of protection of such rights. Disputes arise when views are not uniform as to whether the police should be given a power to decide and permit an assembly. The paper evaluates the judiciary's response concerning offence of assembly and the limitations to the right to peaceful protest. The author identifies and criticises the concepts of illegal assembly, and demonstrates how freedom of assembly is restricted to a certain extent in certain circumstances.

Keywords: Right to Peaceful Protest; Protection of Civil Rights in the UK; Human rights.

Legislation: European Convention on Human Rights 1950 Art 10, Art 11; Human Rights Act 1998; Protection from Harassment Act 1997; Public Order Act 1986.

Cases: Austin v Commissioner of Police of the Metropolis [2009] UKHL 5; Dehal v Crown Prosecution Service [2005] EWHC 2154 (Admin); Steel v United Kingdom (24838/94) (1999) 28 EHRR 603

Introduction

The notion behind the adoption of Bills of Rights across the world is that 'citizens can never be fully assured of the safety of their fundamental civil and political rights' unless those rights are afforded some constitutional protection from state interference.¹ Democracies across countries that have adopted a Bill or Charter of Rights 'have entrusted its application largely to the judiciary' to ensure 'the delivery of the rights to citizens'. Nonetheless, the judiciary could 'invade liberties in developing the common law'. In the UK, the unwritten constitution, as maintained by Parliament and the judiciary, is thought to have recognised residual liberties.² It has been argued that the British legal system 'provided a sufficiently effective means of ensuring that power was not abused'.³ However, residual liberties were 'vulnerable to invasion'. In particular, in the UK, the doctrine of parliamentary sovereignty means that Parliament could 'legislate in an area of fundamental rights, thereby restricting or even destroying them'.⁴

The Human Rights Act 1998 (known as the HRA) is regarded as a 'means of receiving the European Convention on Human Rights into domestic law'.⁵ Prior to the introduction of the HRA, the Convention had no domestic binding force in the UK.⁶ However, the Convention had an increasing influence in human rights-related rulings in UK courts as well as the European Court of Justice.⁷ The rights of the Convention received into the rights protected under the HRA such as Section 1(1) of the HRA and Articles 2 to 12 and 14 of the Convention.⁸

¹Helen Fenwick (2007) *Civil Liberties and Human Rights* (4th edn, Routledge), p 115.

²Ibid 115.

³Ibid.

⁴Ibid.

⁵Fenwick (n 2) 157.

⁶Ibid 135.

⁷Fenwick (n 2) 136.

⁸ Fenwick (n 2) 165.

Peaceful Protest

Section 2 of the HRA gives effect to the rights set out in Articles 10 and 11 of the ECHR which provides that 'everyone has the right to freedom of expression' and 'has the right to freedom of peaceful assembly'⁹ including freedom to hold opinions without interference by a public authority, subject to 'restrictions or penalties as are prescribed by law' and 'are necessary in a democratic society'.¹⁰ Essentially, peaceful protest is a non-violent form of protest against a law or laws perceived to be unjust.¹¹ Protesters affirm their belief in the injustice of a law of government action through direct action or peaceful march. It is suggested that the right to peaceful protest is a mark of a civilised community.¹²

Freedom of Expression and Assembly

Articles 10 and 11 of the ECHR provide the right to freedom of expression and freedom of assembly respectively and collectively enshrine 'a cornerstone of a democratic society'.¹³ In *Steel*¹⁴, the European Court held that participation in protest or demonstration 'constituted an act of expression which required protection under Article 10'.¹⁵ Therefore, the prosecution and conviction of a person for offences arising out of a peaceful protest would be amounted to an interference with their rights of expression and assembly unless they are justified as necessary by the State.¹⁶ Moreover, it was held in *Dehal*¹⁷ that the court had to be satisfied before convicting that the 'proceeding had been brought in pursuit of a legitimate aim',¹⁸ namely the protection of society against violence and that 'a criminal prosecution is the only method necessary to achieve that aim'.¹⁹ As can be seen, the ECHR arguably guarantees, amongst other things, the right to freedom of peaceful protest and the right of freedom of expression.²⁰ However, the provision also allows states to restrict these rights for the protection of public order.

Limitations to the Right to Peaceful Protest

The right to peaceful protest and expression are subject to necessary restrictions such as the need to maintain public order and the protection of individuals from harassment.²¹ Therefore, these rights are not absolute.

Public Order and Peace

As mentioned, the right to demonstrate and protest is not absolute as it is restricted and subject to a variety of statutory provisions such as Article 11(2) of the ECHR that sets out restrictions to the right. In addition, the right to peaceful protest is subject to particular formalities and conditions under sections 11 and 14A of the Public Order Act 1986 (POA) which entails further restrictions when exercising the right to freedom of expression and assembly.

Granting of Injunctions

In recent years, the courts have been increasingly invited to grant injunctions in pursuance of the Protection from Harassment Act 1997 (PHA).²² The PHA was initially introduced to provide protection to individuals who are subjected to stalking. However, it has been used by companies to prevent protest groups from conducting demonstrations. Consequently, the PHA is said to have been used contrary to

⁹ECHR, Art 11.

¹⁰ECHR, Art 10(2).

¹¹Tom Wainwright, 'Civil disobedience' (Sweet & Maxell, 2014), para 1.

¹²Ibid.

¹³Carol Hawley, 'Demonstrations and protests: harassment' (Sweet & Maxell, 2014), para 1.

¹⁴*Steel v United Kingdom* (24838/94) (1999) 28 EHRR 603.

¹⁵Wainwright, (n 12) para 8.

¹⁶Ibid.

¹⁷*Dehal v Crown Prosecution Service* [2005] EWHC 2154 (Admin).

¹⁸Ibid para 9.

¹⁹Ibid.

²⁰Graeme Broadbent, 'Unlawful assembly' (Sweet & Maxell, 2015), para 8.

²¹Hawley (n 14).

²²Hawley (n 14).

its stated purpose and thus it could be argued whether the statute has been properly interpreted and applied in particular circumstances.

The Power of the Police

The police have certain powers available in situations of peaceful protest and demonstration. However, the exercise of the powers to restrict the rights of protesters is highly debatable. For example, the police are conferred power to prevent an imminent breach of the peace under common law. Moreover, Section 2 of the POA states more serious offence such as violent disorder. In the UK, the students arrested in connection with the protests against tuition fee increases were said to be exclusively charged with violent disorder, as opposed to charge under Sections 4A and 5 of the POA in respect of harassment.²³ Therefore, it is suggested that the police had been 'heavy-handed in the policing of the demonstration'.²⁴ This change in the nature of protest may have an impact on how peaceful protest is regulated.²⁵

Conclusion

In light of the current law of peaceful protest, it is arguable whether an appropriate balance has been struck between Articles 10 and 11 of the ECHR and the relevant restrictions in relation to the right to peaceful protest so as to ensure sufficient protection for freedom of expression and assembly that are embodied in the ECHR provisions and domestic law in the UK. Nevertheless, the scope of the restrictions seems to have widened as it is necessary to preserve a limited right to protest for the purpose of maintaining of peace and order in the public interests. If the aim of peaceful protest is to raise awareness of society to a particular cause and at the same time to apply pressure whilst those rights are preserved by broad restrictions, it is arguable whether the balance has properly been struck.

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²³Ibid para 31.

²⁴Ibid.

²⁵David Mead, 'A chill through the back door? The privatised regulation of peaceful protest' (2013) *Jan Public Law*, p 100.

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