

11KBW

Extraterritorial application of Human Rights Laws: The United Kingdom experience

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1. Human Rights claims against the State

Human Rights Law in the UK

- No written constitution setting out a Bill or Charter of Rights
- UK a signatory of the European Convention on Human Rights
- Human Rights Act 1998
 - “Bringing rights home”
 - Incorporated the European Convention of Human Rights (“ECHR”) into domestic law
 - In force from 2 October 2000

The Human Rights Act 1998: territorial application

- Human Rights Act 1998 is silent on its territorial application other than to state that the Act extends to Northern Ireland: see s 22(6) HRA
- *R (Al-Skeini) v Sec State for Defence* [2008] 1 AC 153: general presumption that statutes do not have extraterritorial effect however HRA territorial application the same as the ECHR jurisdiction under Art 1 ECHR

The ECHR jurisdiction

- Article 1 ECHR provides that states “shall secure to everyone within their jurisdiction the rights and freedoms” set out in the Convention
- Primary basis of jurisdiction under the ECHR is territorial: states are responsible under the Convention for their actions within their own territories
- Need “exceptional circumstances” or “special features” for extraterritorial jurisdiction to arise: *Al-Skeini v United Kingdom* (2011) 53 EHRR 589

Extraterritorial application of the HRA

- *R (Al-Saadoon) v Sec of State for Defence* [2017] QB 1015
 - Where UK exercises effective military control over an area outside the UK
 - Where agents of the UK Government exercise control and authority over others:
 - diplomatic and consular staff exercise control and authority over others
 - Where a government of a territory allows a UK public authority to exercise all or some of the public powers
 - Where agents of the UK bring an individual under their control through force

Extraterritoriality and environmental human rights claims

- *Duarte Agostinho* (2024) EHRR SE 9: No extraterritorial obligations linked to the impact of emissions outside a state's borders
- cf Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 on The Environment and Human Rights*

2. Human Rights claims against private bodies

Introduction

- HRA claims for breach of Convention rights against “public authorities”, see s 6(1) HRA
- A “public authority” can include private corporations acting on behalf of the state: hybrid public authorities
- Eg G4S running a prison (either in UK or abroad): claims can be brought by prisoners alleging breach of Convention rights

Vindication of human rights violations abroad via tort claims

- *Lungowe v Vedanta* [2020] AC 1045
 - Negligence claim against UK company and its Zambian subsidiary
 - Zambian citizens alleged personal injury, damage to property and loss of income arising from pollution and environmental damage caused by discharges from a copper mine
 - Supreme Court held that English courts had jurisdiction to hear claim against UK company and its Zambian subsidiary in the English courts

Reporting Requirements and due diligence

- Modern Slavery Act 2015
 - Transparency in supply chains
- Section 414C Companies Act 2006
 - Annual strategic report must detail business's impact on respect for human rights
- Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill
 - Human Rights due diligence