



# Victim Support Scotland

## HUMAN RIGHTS INQUIRY EVIDENCE TO THE EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Victim Support Scotland (VSS) is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime within each local authority and every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. VSS welcomes the opportunity to provide our views to the Committee on the Human Rights Inquiry.

Human rights are of vital importance to victims and witnesses of crime. There have been a number of cases in which human rights laws have been used to highlight injustices against those who have experienced crime, in some cases changing the criminal justice system to address these issues. For example:

- After feeling that the police didn't believe them or take their complaints seriously enough, two victims of rape used sections 7 and 8 of the Human Rights Act to bring action for damages and declarations arising out of failures by police forces in England to effectively investigate their cases. The Court found the police failings to have resulted in 'inhuman and degrading treatment' towards the victims, a breach of their article 3 right under the ECHR<sup>1</sup>.
- Ahmet Osman<sup>2</sup> was shot and seriously wounded and his father killed by his stalker after repeatedly asking the police for protection. The European Court of Human Rights (ECtHR) ruled that not only was the police's failure to protect him and his family a breach of his article 2 right to life, the UK were not justified in providing the police with immunity against complaints and denying the family access to a court. As a result, police practice was changed to provide 'Osman warnings' to people in danger.
- After a judicial review by the family of military policewoman Anne-Marie Ellement, a fresh inquest into her death was granted. The Human Rights Act (HRA) was used to argue for a new and independent investigation into the rape complaints made by Anne-Marie before her death. As a result of this, two men have now been charged with rape<sup>3</sup>.

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<sup>1</sup> <http://rightsinfo.org/stories/the-black-cab-rapist/>, [2015] EWCA Civ 646.

<sup>2</sup> <http://rightsinfo.org/stories/they-kept-telling-the-police-but-the-police-did-nothing> CASE OF OSMAN v. THE UNITED KINGDOM (87/1997/871/1083)

<sup>3</sup> <https://www.liberty-human-rights.org.uk/campaigning/military-justice-0> accessed 17/11/15

These examples show the importance of being able to hold criminal justice and public agencies to account for their treatment of victims within the UK through human rights legislation, and the positive impact that the higher power of the ECtHR can have on this treatment.

Alongside the duty placed on public authorities to consider human rights in all of their actions and policy decisions, the Human Rights Act makes rights from the European Convention on Human Rights (ECHR) enforceable within our own courts, mostly avoiding the need for affected individuals to undertake the expensive and time-consuming process of taking a case to the European Court of Human Rights in Strasbourg. It is our view that these principles remain valid and necessary, and that changes do not need to be made to the current human rights regime in the UK. VSS strongly feels that the Human Rights Act should remain in place, and if anything should be further strengthened through incorporation of the rights in international treaties (such as the UN Covenant on Economic, Cultural and Social Rights (UNECSR)) into domestic law.

The proposals on the reform of British human rights laws outlined by the Conservative Party in their 2014 paper<sup>4</sup> threaten a concept fundamental to human rights protections, universality, which means that human rights apply to all human beings, regardless of status or personal characteristic. Not only do the proposals suggest an attempt to decrease human rights protections for certain groups or in certain circumstances, they intend to limit the use of any new human rights law to ‘serious cases’, with UK courts able to “strike out trivial cases” if they fall below a certain threshold<sup>5</sup>.

VSS strongly contests the idea that human rights protections should be dependent on a person’s status within society, especially considering that it is the most vulnerable within society who are most in need of such protection and the ability to access this. We support the First Minister’s assertion that “if you weaken human rights protection...you're striking instead at the poor, the vulnerable, and the dispossessed”<sup>6</sup>.

Furthermore, we do not believe that there are *any* human rights cases that could be considered ‘trivial’, as all human rights infringements are of fundamental importance to the person affected. All those who feel their human rights have been infringed should have equal access to the ability to have this addressed within the domestic courts; it is not acceptable to expect excluded groups to take their case to the ECtHR, considering the cost and time implications inherent in this process. In addition, placing conditions on access to human rights protections would create confusion and a lack of awareness of their rights among the general public.

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<sup>4</sup> [https://www.conservatives.com/~media/files/downloadable%20Files/human\\_rights.pdf](https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf)

<sup>5</sup> [https://www.conservatives.com/~media/files/downloadable%20Files/human\\_rights.pdf](https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf) p.7

<sup>6</sup> Nicola Sturgeon speech to Peace Institute, Govan on 23 September 2015, access from <http://news.scotland.gov.uk/Speeches-Briefings/First-Minister-Human-Rights-1d7d.aspx> on 18/11/15

Further concerns held by Victim Support Scotland when considering the proposals to replace the Human Rights Act with a British Bill of Rights include possible reputational damage to Scotland and the UK. The UN High Commissioner for Human Rights has described these proposals as “profoundly regrettable; damaging for victims and human rights protection; and contrary to this country’s commendable history of global and regional engagement.”<sup>7</sup> In addition, constitutional issues would arise if the UK were to proceed with these plans without the will of the Scottish Parliament, as set out in the Sewel Convention.

VSS is particularly concerned that our Council of Europe membership would be at risk if these proposals were to be implemented. We note the benefit to victims and witnesses of this membership; most significantly, the 2012 Victims’ Directive<sup>8</sup> will not only raise the standards of justice experienced by victims across the EU to a level similar to that experienced within the UK, the implementation of the Directive further promotes the rights of victims of crime within the UK. The Victims and Witnesses (Scotland) Act 2014, for example, introduces provisions that will ensure that victims are provided with better treatment, enhanced levels of protection, increased access to information and the ability to participate more fully in the criminal justice system. VSS believes that the Victims’ Directive has prioritised victims’ rights within the UK by encouraging its governments to prompt action than would have occurred through the domestic legislative agenda.

In addressing the ‘mission creep’ argument, we propose that human rights should apply to every aspect of life, and that there are not in fact areas “beyond what the framers of the Convention had in mind when they signed up to it”<sup>9</sup>. Alongside the concept of universality, application to all areas of life is fundamental to human rights legislation and protections.

Finally, VSS does not think it possible or desirable for there to be different human rights regimes within the UK. In addition to being impracticable and creating unequal enjoyment of human rights across the UK, such a situation would confuse the public as to which rights they have, and so result in fewer individuals accessing the protections that they are entitled to enjoy.

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<sup>7</sup>Speech entitled ‘The United Nations at 70 - has our global experiment worked?’ London, Guildhall, 9 October <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16593&LangID=E>

<sup>8</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

<sup>9</sup> [https://www.conservatives.com/~media/files/downloadable%20Files/human\\_rights.pdf](https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf) p.3