

Rule of Law: Theoretical Projection and Practical Applications in UK Legislation

Introduction	1
Comparison.....	1
<i>The King's Speech and the Rule of Law</i>	1
<i>Ghaidan v Godin-Mendoza</i> [2004] UKHL 30	2
Analysis.....	3
Conclusion.....	3
Bibliography.....	4
Cases	4
Legislation	4
EU Legislation	4
Secondary Sources	4

Introduction

This essay aims to illustrate how the constitutional principle of the Rule of Law is implemented within UK legislation by comparing two legal sources: one general academic source exploring this principle in the pre-legislative context and another court case applying it in the post-legislative context. It undertakes a comparative analysis of an academic commentary and a judicial judgment, examining how they uphold this constitutional principle through their distinctive approaches. Furthermore, the essay discusses the implication of Section 3 of the Human Rights Act 1998¹ in the UK legislative framework, focusing on how it gives rise to Convention rights and the critical importance of preserving Section 3 to uphold the Rule of Law.

Comparison

The King's Speech and the Rule of Law

The King's Speech formally marks the State Opening of a new parliamentary session, setting out the government's legislative agenda. The author highlights specific proposals that raise significant concerns about the Rule of Law, particularly regarding their violation of the

¹ Human Rights Act 1998, s 3

principle by enacting legislations that disproportionately disadvantage certain societal groups without objective justification. Notably, the author dedicates considerable attention to the Victim and Prisoner Bill², critiquing the proposed exclusion of Section 3 of the Human Rights Act 1998 within the Bill (Moxham, 2023). These legislative agendas are criticized for potentially establishing a two-tiered system, thereby creating a domestic ‘legal vacuum’ that undermines the universality of human rights (Finer, 2023, quoted in Moxham, 2023). This disparity in legislative treatment underscores the imperative for greater scrutiny in the law-making process.

***Ghaidan v Godin-Mendoza* [2004] UKHL 30**

This is a landmark judicial decision by the House of Lords concerning the inclusivity of same-sex couples on tenancy succession under the Rent Act 1977³. The court ruled that Schedule 1, Paragraph 2 of the Rent Act 1977 must be interpreted in accordance with Section 3 of the Human Rights Act 1998, which states that ‘So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.’ In this case, the European Convention on Human Rights 1950⁴ was applied to interpret the term ‘spouse’. Consequently, the term was construed to include same-sex couples, and not doing so could not be objectively justified⁵.

This was significant regarding the overarching impact of Section 3 on other legislations. The court considered *Fitzpatrick v Sterling Housing Association Ltd*⁶. A materially similar case was litigated in 1999, where the court ruled that same-sex couples were not included in what is recognized as a family under the housing law⁷. However, the court has now deemed the precedent unfit for application because the judgment was rendered prior to the enactment of the Human Rights Act and no longer aligned with the purpose conveyed by Parliament through subsequent legislation.

² Victim and Prisoner Bill (2023–24) [34]

³ Rent Act 1977, Sch 1, para 2 (1), (2)

⁴ European Convention on Human Rights [1950], arts 8; 14

⁵ *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [55]

⁶ *Fitzpatrick v Sterling Housing Association Ltd* [1999] 4 All ER 705

⁷ Rent Act 1977; Housing Act 1998

Analysis

Both sources focus on the principle of the Rule of Law and its application within the context of human rights, specifically examining how this constitutional principle is reflected through legislation. The former takes a pre-legislative approach, examining how the Rule of Law is integrated into the legislative process. It identifies potential risks through research and expert insights, offering a deeper understanding of its impact on lawmaking. The latter case judgment illustrates the practical preservation of this principle, presenting a post-legislative perspective. The judgment analyzes specific legislative provisions within a legal dispute, applying the Rule of Law to facts. It shows how the principle is upheld or challenged in real-world scenarios, effectively bridging the theoretical framework with practice.

Conclusion

While the two court cases⁸ share significant similarities, their outcomes differed substantially, underscoring the pivotal role of Section 3 of the Human Rights Act 1998 in promoting inclusivity and ensuring equal treatment under the law. Both legal sources provide valuable insights into the implications of the Rule of Law in legislation, demonstrating its meaning from both pre- and post-legislation. They each utilize Section 3 of the Human Rights Act 1998 to exemplify this constitutional principle. The first source advocates preserving Section 3 to uphold the Rule of Law, while the second provides judicial evidence to reinforce why such retention is essential. Together, they emphasize the critical need for legislation to align with Rule of Law principles, a cornerstone of the UK constitution.

⁸ *Ghaidan v Godin-Mendoza* [2004] UKHL 30; *Fitzpatrick v Sterling Housing Association Ltd* [1999] 4 All ER 705

Bibliography

Cases

Ghaidan v Godin-Mendoza [2004] UKHL 30, [55]

Fitzpatrick v Sterling Housing Association Ltd [1999] 4 All ER 705

Legislation

Human Rights Act 1998

Victim and Prisoner Act 2024

Rent Act 1977

Housing Act 1998

EU Legislation

European Convention on Human Rights [1950]

Secondary Sources

Moxham, L. (2023) *'The King's speech and the Rule of Law'*, Bingham Centre for the Rule of Law, 3 November. Available at: <https://binghamcentre.biicl.org/comments/126/the-kings-speech-and-the-rule-of-law> (Accessed: 27 November 2024).

Finer, L. (2023) *'Renting prison space overseas: an accountability gap waiting to happen'*, The Justice Gap, 9 October. Available at: <https://www.thejusticegap.com/renting-prison-space-overseas-an-accountability-gap-waiting-to-happen> (Accessed: 27 November 2024).