

JANUARY 2010

PROSPECTS FOR HUMAN RIGHTS IN 2010

The most disturbing potential answer to the question of what 2010 holds in store for human rights was suggested just after Christmas, by the execution in China of 53 year old British man and convicted drug smuggler Akmal Shaikh. In proceeding with the killing by lethal injection, the Chinese authorities chose to disregard strong interventions on the man's behalf from both the Prime Minister Gordon Brown and the Foreign Secretary David Miliband. It would have been an easy thing to accede to these supplications as Shaikh had a clear history of mental ill-health, but the prime minister was ignored. Indeed in the circumstances, one could say he was almost humiliated, reduced to issuing a statement after the death condemning it in strong terms and saying how 'appalled and disappointed' he had been that the UK's 'persistent requests for clemency [had] not been granted'. Coming so soon after Copenhagen, here is further evidence of the paradigm shift that appears to have occurred with disconcerting speed in international affairs – China felt no need to offer any kind of consolatory concession to Europe or the United Kingdom on an issue (the death penalty) that it knew was very important to them both. Paraphrasing Michael McCarthy who reported on Copenhagen last week, is the future of human rights now to be determined by China? The country seems to have taken control of Africa at the UN and among developing nations there is a deep scepticism about what they see as the unwarrantably close identification between the old colonial nations and human rights talk. As the power of Europe and the United States – both sidelined at Copenhagen – continues to decline, the capacity of the discourse of international human rights to influence events may plummet – in other words it will matter less and less to state leaders and the new (non US/EU centred) international community. How the UN secures the place of human rights as a truly universal ethic in this emerging world order will be a key challenge for the organization and its Korean Secretary General Ban Ki-moon: their protection gets a small mention in the Secretary General's remarks to the Press earlier this week but it is not a subject that appears anywhere on his list of priorities for action.

Closer to home, 2010 is likely to bring further evidence that even in Europe fleshing out the meaning of human rights can be hugely controversial. Just before Christmas, three Irish women finally got to challenge Ireland's prohibition on abortion before the Grand Chamber of the European Court of Human Rights. Their argument was based squarely on what they said was their right both to privacy and to be treated in a non-discriminatory fashion. Ireland's Attorney General pointed to the right to life (also in the Convention of course) and pleaded with the judges to respect Ireland's choice as to the beginning of life on a matter of such cultural and religious importance. The difficulty with this argument may well be found to lie in the fact that Ireland has at least theoretically allowed some legal abortions (as a result of a referendum and then a court case interpreting the change that was made) so in such circumstances how can the country say that it is fervently opposed to terminations as a matter of principle? To answer that the right is never permitted in fact, that it is, as counsel for the women put it, entirely 'bogus', is to expose an ethic rooted in hypocrisy and double standards – something that is unlikely to impress the Strasbourg judges as they reflect on what their ruling should be. When it is finally handed down, the judgment may well provoke a brief return to Ireland's cultural wars of the 1980s and early 1990s.

In the United Kingdom, the big event from a human rights point of view will be the general election. While the polls are not unequivocal, the likely winner continues to be the Conservative Party, and among David Cameron's clearest pledges has been a promise to repeal the Human Rights Act (passed in 1998 by the first Labour administration) and to replace

it with an indigenous bill of rights and responsibilities, better tailored (he says) to the needs of the British people. The plan is not to withdraw from the system of oversight of UK law by the European Court of Human Rights in Strasbourg but rather to deny to national judges the power to interpret laws in line with that court's requirements. A moment's thought reflects the obvious defect in this scheme – losers in the national courts will simply head off to Strasbourg to get the results they want which the Government will then be under an international law duty to implement. This is exactly why the Human Rights Act was enacted in the first place: Labour's slogan was 'Bringing Rights Home'. It remains to be seen whether the repeal proposal will appear in the Party's election manifesto – it plays well with the public in a generalized, anti-European/anti-political correctness kind of way, so maybe given the nature of today's Tory party the fact that it collapses under the first hint of close scrutiny will be no bar to its inclusion.

For its part, Labour is gearing up for the election by showing that it too is willing to engage in a few human rights fights when it feels it has no option. Expect much controversy over the government's proposals to continue with the retention of DNA material, over new stop and search powers for the police, and mandatory sex and relationships education in schools (albeit with a parental opt-out). The difference between Labour and the Conservatives is that Labour always now tries (however annoyed and angry it might be) to work within the human rights framework, whereas the Tories appear to look forward to the deliberate subversion of it. The Liberal Democrats have long been enthusiasts not only for human rights but for bills of rights in general and all sorts of constitutional change. If there is to be a hung parliament, these may be just the kinds of issues either of the larger parties feel they can concede to Nick Clegg and his team without it seeming to affect their own policy priorities. A not wholly unlikely possibility post the election, therefore, is movement on a new bill of rights for Britain, something the Lib Dems care about a great deal, and to which both of the larger parties are in a lukewarm kind of way committed.