Professor Alan Miller, Chair of the Scottish Human Rights Commission, spoke to *Good Morning Scotland* in light of reported proposals to replace the Human Rights Act and withdraw from the European Convention on Human Rights.

This is an edited extract from the broadcast on 19 July 2014. The full programme is available online at <http://www.bbc.co.uk/programmes/b04966c1>.

**Interviewer (I): What’s the genesis of the Human Rights Act?**

**Alan Miller (AM):** The genesis of the Human Rights Act is to give greater effect to the European Convention on Human Rights in the UK and to ensure that all of us in the UK have full protection from the rights contained within the Convention. It’s to apply a rule of law with respect to human rights uniformly throughout the whole of Europe.

**I: What do you think about this idea that the European Convention on Human Rights should have been frozen in time instead of evolving to interpret new areas?**

**AM:** The Court has developed over the last sixty years or so. When it was set up after the Holocaust and the Second World War and the need to provide some basic protection and rule of law and line below which we do not fall again, it was concerned more with right to fair trial, no arbitrary arrest, no torture in prison, the 3 o’clock wake-up. But it was always felt that for the Court to remain valid and legitimate in the eyes of people, it had to be able to deal with the issues that society as it developed threw up. And so the Court is now providing judgments which are very helpful in the areas of quality of care that older persons receive, a healthy environment, issues relating to privacy and data surveillance. So the Court in order to remain in touch with what’s happening in society clearly has to be a living instrument and that was always the conception from the beginning of the Court. And it’s done well.

**I: The recurring criticism of the Court is that Parliament should be supreme and these judges are not elected. How do you answer that?**

**AM:** By putting it in some context. This debate is a Westminster bubble debate. It’s not a debate that takes place elsewhere in Europe. It’s not a debate that takes place in Scotland or other parts of the UK. It’s a Westminster bubble. Why is that? It’s because there are people in Westminster who cannot catch up with the rest of the world which now governs itself in a way that it didn’t do in the 18th and 19th century. Britain is almost alone now in not having a written constitution and still clinging to this outdated notion that Parliament should be able to have the final word and if need be, breach the dignity and rights of the population within the country. It’s simply on the wrong side of history. Whether you take a European perspective, whether you take a global perspective or whether you take the perspective of what’s happening in the rest of the UK, it’s simply on the wrong side of history.

**I: What about the margin of appreciation that states enjoy?**

**AM:** You have a very clear example of that just now. At both Parliaments, in Edinburgh and Westminster, there is a lot of debate about assisted dying and the merits and concerns about that. The European Court of Human Rights in Strasbourg has said this is entirely a matter for each Parliament and public opinion to decide in its own ways. There is no consensus around Europe on this, therefore it is to the discretion of those within their own countries to decide whether they want to legislate along those lines or not. And that’s an example of where the Court recognises that certain decisions have to be made in each country, but they should not go below a line, a minimum threshold of the dignity of rights and people that should not be breached.

**I: If the Human Rights Act is withdrawn or repealed or altered in any way at Westminster, will that affect how it’s incorporated into Scots law.**

**AM:** I would be confident that Scotland will not go down that road and it will retain the same level of protection we have now with the European Convention on Human Rights and if needs be, a Scottish Human Rights Act. But where there are reserved areas that Westminster has powers over, which are quite considerable, there would be a negative impact on the people of Scotland if this line was taken at Westminster, which as I say is on the wrong side of history from any perspective.