The CAIU has a delegated power to deal with civil claims on behalf of the Commissioner. This includes making decisions following legal advice as to whether a claim should be contested or settled. Cases of particular complexity and value have added oversight from the Mayor of London's Office for Policing and Crime.

The CAIU provides oversight of a claim and is responsible for the review and disseminating of any lessons learned arising from the claim itself. Where appropriate the CAIU shares its learning with officers and the training department including policy leads.

The ECtHR's findings in this case have been carefully considered by the CAIU. It noted that the events that gave rise to this application took place between 2011 and 2015, without a similar set of circumstances recurring.

Second, part of the background to the case was that in 2011 a first instance harassment warning had been issued to the applicant. (The judgment notes that she was informed by letter that an allegation of harassment had been made against her; that AB had asked her to stop sending him emails as he was feeling harassed by their content; and that if she committed any act or acts either directly or indirectly that amount to harassment, she might be liable to arrest and prosecution.) A decision was taken by the MPS based on national guidance that first instance harassment warning notices and letters would no longer be in use with effect from 1 February 2020.

In addition, the College of Policing is responsible for setting standards for key areas of policing to help forces and individuals provide consistency and better service to the public. As such it authors the official Authorised Professional Practice for policing. This includes guidance on the Article 10 rights to freedom of belief and expression, and the limited circumstances in which those rights can be restricted.[35] There is also more general guidance available to officers to help them judge when arrest is appropriate, and on handling of harassment allegations.

In light of the circumstances surrounding the arrest and the details above, the Government is satisfied that no further action is necessary in relation to the individual officers, the MPS or wider policing.

The Government considers that all necessary individual and general measures have been taken and has submitted an Action Report to the Committee of Ministers requesting that it close its supervision of the judgment.

[35] https://www.college.police.uk/app/public-order/core-principles-and-legislation/core-principles-and-legislation#restricting-the-right-to-freedom-of-expression

Earlier declarations of incompatibility

Since the last report, there is further information on the following declarations of incompatibility:

- 30. *Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya*
- 40. *K (A Child) v Secretary of State for the Home Department*
- 41. *Siobhan McLaughlin, Re Judicial Review (Northern Ireland)*
- 43. *Jackson and Others v Secretary of State for Work and Pensions*
- 44. *In the matter of an application by 'JR111' for judicial review (ruling on remedy)*.

30. Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya

Court of Appeal; [2015] EWCA Civ 33; 5 February 2015

The Court of Appeal held that sections 4(2)(b) and 16(1)(a) of the State Immunity Act 1978 are incompatible with Article 6 ECHR in so far as they barred two members of the service staff of foreign missions (Libya and Sudan) bringing employment claims in the UK courts. In so far as those claims fell within the scope of EU law (e.g. Working Time Directive claims), there was also a violation of Article 47 of the Charter of Fundamental Rights.

In terms of remedy, the Court of Appeal made a declaration of incompatibility in respect of sections 4(2)(b) and 16(1)(a) of the 1978 Act. For the same reasons, the Court found that those provisions of the 1978 Act were incompatible with EU law. In respect of those employment claims which were within the scope of EU law, the Court disapplied the provisions in so far as they barred the claims, which meant the claims could be brought by the claimants.

The Foreign Secretary appealed to the Supreme Court which dismissed the appeal and upheld the declaration of incompatibility ([2017] UKSC 62).

On 23 February 2021, the Government announced its intention to address the incompatibility by Remedial Order.[36] The proposal for a draft State Immunity Act 1978 (Remedial) Order was laid on 11 May 2022 and the Joint Committee's report was published on 12 July. The Government then laid its response and a revised draft Remedial Order on 7 September.[37]

[36] https://questions-statements.parliament.uk/written-statements/detail/2021-02-23/hcws788

[37] https://www.legislation.gov.uk/ukdsi/2022/9780348238754

In order to remedy the incompatibility, Article 3 amends section 4(2)(b) of the 1978 Act by restricting the immunity of States in relation to employment claims brought by individuals who were neither a UK national nor resident in the United Kingdom at the time the contract was made to cases involving a State that is party to the European Convention on State Immunity, as is required by the UK's obligations as a party to that Convention.

Article 5 amends section 16(1) of the 1978 Act by limiting the immunity of States in relation to employment claims brought by the staff of diplomatic and consular missions to the immunities required under customary international law. These are claims involving the contracts of employment of an individual as a diplomatic agent or consular officer, or claims involving the contracts of employment of other members of a diplomatic mission or consular post where the State entered into the contract in the exercise of its sovereign authority or where the conduct complained of was undertaken in the exercise of sovereign authority.

Article 4 amends section 13 to address the consequence of restricting the immunity provided in section 16(1) of the 1978 Act on the UK's obligations under Article 7 of the Vienna Convention of Diplomatic Relations, which provides that a State may "freely appoint the members of the Staff of the mission", and the obligation in Article 19 of the Vienna Convention on Consular Relations, which provides that a State may "freely appoint the members of the consular staff". The current version of section 16(1)(a) of the 1978 Act gives effect to these international obligations, as it provides that a State is immune in all proceedings concerning the employment of the members of a diplomatic mission or consular post, so that a court cannot enforce a contract of employment or make a reinstatement order in favour of a member of a mission or consular post. The amendment to section 16(1)(a) of the 1978 Act in Article 5 restricts the immunity in that provision (as described above), and the amendments to section 13 ensure that a court, hearing proceedings that it would not have been able to hear under the unamended section 16(1)(a), is prevented from making an order that would infringe on a State's right to freely appoint members of its diplomatic or consular staff.

The amendments made in this Order will apply in relation to proceedings in respect of a cause of action that arose on or after the date of the Supreme Court judgment, 18 October 2017.

40. K (A Child) v Secretary of State for the Home Department

Administrative Court; [2018] EWHC 1834 (Admin); 18 July 2018

The case of 'K' related to a child who was not a British citizen by birth because his mother was married to someone other than his British father at the time of his birth.

Changes to the British Nationality Act 1981 from 1 July 2006 amended the definition of 'father' within section 50(9A) of that Act. For a child born after that date their father is the husband of their mother or, if there is no husband, a person who satisfies the relevant

proof as to paternity (essentially the biological father). In the case of K the child's biological father was a British citizen, but the mother was married to a non-British citizen. The non-British husband is treated as the 'father' for nationality purposes. K therefore had no entitlement to British citizenship; however, they could apply for registration as a British citizen under a discretionary provision.

The Court was clear that the legislation could only be interpreted to mean that the husband of the mother (where the mother was married) must be the child's father for nationality purposes. The Court accepted that the aims of that section were legitimate social policy goals: that each child should be limited to two parents for nationality purposes, and that there should be reasonable legal certainty as to who shall be treated as parents. It also accepted that it is reasonable to presume that a child born within marriage is a child of that marriage, and that to displace that presumption it is reasonable to require an application process. However, it went on to make a declaration that the definition of father under section 50(9A) of the British Nationality Act 1981 was incompatible with Article 14 (read with Article 8) in circumstances where the mother of the child was married to someone other than the biological father at the time of the child's birth. This was on the basis that whilst there was a route to registration for such children (section 3(1) of the 1981 Act), this was a discretionary provision and not an entitlement. Such children did not therefore have an adequate remedy against the discrimination which they faced.

Section 7 of the Nationality and Borders Act 2022 ('Citizenship where mother married to someone other than natural father') came into force on 28 April 2022.[38] It gives an entitlement to children in K's position to register as a British citizen. This was achieved by removing the requirement (at section 4E of the British Nationality Act 1981) for children of unmarried fathers to have been born before 1 July 2006 in order to have an entitlement to register. People born on or after that date can now register as a British citizen, if they would have become British had their parents been married at the time of their birth. Applications are free of charge.

41. Siobhan McLaughlin, Re Judicial Review (Northern Ireland)

Supreme Court; [2018] UKSC 48; 30 August 2018

Bereavement Benefits can be paid when a person's spouse or civil partner dies. Siobhan McLaughlin cohabited with her partner for over 20 years in Northern Ireland, and following his death in 2014 was left as the sole carer for their 4 children. Her claim for Widowed Parents Allowance (WPA) was refused as they were not married or in a civil partnership when he died. She challenged this in the Northern Ireland Courts, winning in the High Court but subsequently losing on appeal.

[38] https://www.legislation.gov.uk/ukpga/2022/36/section/7/enacted

The Supreme Court declared that the requirement in Section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for a marriage/civil partnership as a qualifying condition of WPA was incompatible with Article 14, read with Article 8. The Supreme Court said: 'The purpose of the allowance is to diminish the financial loss caused to families with children by the death of a parent. That loss is the same whether or not the parents are married to or in a civil partnership with one another.'

On 28 July 2020, the Government announced its intention to take forward a Remedial Order to remove this incompatibility and the incompatibility identified in *Jackson* (no. 43, below). The proposal for a draft Bereavement Benefits (Remedial) Order was laid on 15 July 2021 and the Joint Committee's report was published on 12 November 2021. The Government laid its response and the draft Remedial Order on 13 October 2022.

The draft Remedial Order will extend eligibility for WPA and the higher rate of Bereavement Support Payment (BSP) to surviving cohabitees with dependent children. It is proposed that once the Order comes into force it would be effective from 30 August 2018, the date of the *McLaughlin* judgment. There will be no minimum period of cohabitation required to make a claim, eligible claimants will only need to have lived with the deceased on the date of death.

43. Jackson and Others v Secretary of State for Work and Pensions

Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020

Bereavement Support Payment (BSP), which was introduced in April 2017, can be paid when a person's spouse or civil partner dies. It consists of a lump sum and 18 monthly instalments with higher amounts paid for those with children. Mr Jackson had been living with his partner for 14 years when she died in 2018; they had three children together.

The High Court declared that the primary legislation governing BSP was incompatible with Article 14 read with Article 8 in that BSP could only be paid at the higher rate in respect of parents who were spouses or civil partners of the deceased. Drawing a parallel with the *McLaughlin* case the Court took the view that the higher rate was for children and that limiting eligibility for BSP in this way is unfair discrimination against children on the grounds of their parents' status. The Government did not appeal this case.

On 28 July 2020, the Government announced its intention to remove this incompatibility by Remedial Order. See *McLaughlin* (no. 41, above) for further details.

44. In the matter of an application by 'JR111' for judicial review (ruling on remedy)

Queen's Bench Division (NI); substantive judgment [2021] NIQB 48 on 13 May 2021; ruling on remedy 21 May 2021.

The case was brought in the High Court of Northern Ireland and concerns the Gender Recognition Act 2004 (the GRA). The GRA provides that an applicant for a Gender Recognition Certificate (GRC) must provide certain evidence before a GRC can be granted, including a medical report confirming that they have a diagnosis of gender dysphoria. Gender dysphoria is defined at section 25 of the GRA as '... the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism'. Since the Act was passed in 2004, how gender dysphoria is described has changed, and it is no longer regarded or classified as a mental disorder.

The applicant claimed that it was a breach of her human rights to require her to produce such a report in order to obtain a GRC, and that requiring a diagnosis of gender dysphoria, described as a disorder, was stigmatising and a breach of her Article 8 and Article 14 rights. The Court held that the requirement for a medical diagnosis and medical report could be viewed as part of the proper checks and balances which the State was entitled to adopt, and was Convention compliant. However, the requirement that the diagnosis was one which was specifically and expressly defined as a 'disorder' was not: it was unnecessary, unjustified and 'an affront to the dignity' of those applying for a GRC.

The Court made a declaration that 'sections 2(1)(a) and 25(1) of the Gender Recognition Act 2004 are incompatible with the applicant's Convention rights under Article 8 ECHR insofar as they impose a requirement that she prove herself to be suffering or to have suffered from a *"disorder"* in order to secure a gender recognition certificate.'

The time limit for the applicant to appeal the decision which went against her was reached on 9 September 2021.

On 24 March 2022, in its response to the Women and Equalities Committee's report on the reform of the GRA, the Government announced its intention to address the incompatibility by Remedial Order.[39]

[39] https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/129/report.html
See also https://questions-statements.parliament.uk/written-questions/detail/2022-02-25/HL6452

New declarations of incompatibility

The domestic courts made two declarations of incompatibility under section 4 of the HRA during the period August 2021 – July 2022. These are the 45th and 46th declarations made since the HRA came into force on 2 October 2000.

45. In the matter of an application by JR123 for judicial review

Queen's Bench Division (NI); [2021] NIQB 97; 1 November 2021

The applicant was convicted of arson in 1980, for which he received a five-year prison sentence to be served concurrently with sentences for other offences. Since his release in 1982 he has had no involvement with the criminal justice system and has no further convictions. However, under the Rehabilitation of Offenders (Northern Ireland) Order 1978, any sentence of imprisonment of over 30 months can never be spent and is subject to lifelong disclosure. The applicant claimed that this breached his Article 8 rights and that repeated disclosure of his convictions has led to a number of difficulties and negative consequences, for example, in securing employment and insurance.

The High Court found that the idea that a conviction can never be spent, irrespective of individual circumstances, pays insufficient weight to the interests protected by Article 8. In the view of the Court, it would be both practicable and proportionate to devise a system of administrative review which would enable persons such as the applicant to apply to have their conviction deemed to be spent. That system of review would involve consideration of such matters as the circumstances of the conviction, the length of sentence, the period of time since the conviction was imposed, the conduct of the individual since the conviction and his current personal circumstances.

Accordingly, the Court granted a declaration that "Article 6(1) of the Rehabilitation of Offenders (NI) Order 1978 is incompatible with Article 8 of the ECHR by reason of a failure to provide a mechanism by which the applicant can apply to have his conviction considered to be spent, irrespective of the passage of time and his personal circumstances."

The Northern Ireland Department of Justice lodged an appeal in July 2022 against the judgment and the terms of the Order whereby the Court granted the application for judicial review and the declaration of incompatibility. The Department of Justice did not appeal against the Court's decision to decline to award damages. The applicant has since served notice of cross appeal in relation to the decision not to award damages and the matter is listed for hearing on 10 March 2023.

Prior to the initiation of this legal challenge, the Northern Ireland Minister of Justice publicly committed to a review of rehabilitation of offenders legislation in Northern Ireland with the dual objectives of reducing existing rehabilitation periods and increasing the range of sentences capable of becoming spent.

This reform work was progressed in parallel to the legal challenge, and a statutory instrument has been drafted to introduce legislative amendments to the 1978 Order that can be implemented by way of secondary legislation, as opposed to the primary legislation needed for the mechanism proposed by the Court.

The Department of Justice considers that its newly developed regime is more straightforward, of more immediate benefit to more members of the public (including the applicant), and more cost-effective than the mechanism proposed by the Court in its judgment.

The intention is that the statutory instrument will be laid before the Northern Ireland Assembly for affirmation as soon as an Executive is formed and the Assembly starts sitting.[40]

46. R v Marks, Morgan, Lynch and Heaney

Court of Appeal (NI); [2021] NICA 67; 22 December 2021

After the London Bridge attack in November 2019 committed by a terrorist offender on licence, the Government set out its plans to tackle automatic early release and increase sentences for terrorist offences. Following the Streatham attack in February 2020, also committed by a terrorist offender released on licence, the then Lord Chancellor Robert Buckland made a statement to Parliament in which he committed to immediate action and emergency legislation to end terrorist offenders getting released automatically with no check or review having served half their sentence in prison.

The statement made clear that the priority of this Government was to protect the public and that the situation demanded an immediate response and application to existing prisoners to prevent their release without Parole Board supervision.

Later in February 2020, the Terrorist Offenders (Restriction of Early Release) Act (TORER) 2020 was introduced. TORER removed automatic release at the halfway point for determinate sentenced terrorist offenders in England, Wales and Scotland, and replaced it with consideration for release by the Parole Board at the two-thirds point of the sentence. To be effective, the legislation had to apply retrospectively to existing prisoners.

[40] We are grateful to the Northern Ireland Department of Justice for providing this update on the case.

Terrorism is a reserved matter, whilst sentencing and release are devolved matters. Due to differences in the way that sentences are imposed between Great Britain and Northern Ireland, the retrospective element in Northern Ireland required a slightly different analysis to assess compliance with the requirements of Article 7 (No punishment without law). Provision for Northern Ireland was therefore not included in the emergency Bill but was instead introduced at a later date after careful consideration of compatibility.

Section 30 of the Counter-Terrorism and Sentencing Act 2021 brought Northern Ireland in line with England, Wales and Scotland, extending the TORER policy so that terrorist offenders in Northern Ireland previously entitled to automatic release at the halfway point in their sentence now have to serve two thirds of their sentence before they are entitled to release, which must now be approved by parole authorities. These arrangements applied retrospectively to serving terrorist offenders.

Several challenges have been brought by serving Northern Ireland terrorist offenders whose release dates have been affected by this legislation. Six offenders applied for a declaration of incompatibility. Marks, Morgan, Lynch and Heaney, determinate sentenced offenders, proceeded to appeal to the Court of Appeal in October 2021. The other two indeterminate sentenced offenders wished to await the Court's view on the compatibility of section 30 with an indeterminate custodial sentence. Those cases were heard but the UK Ministry of Justice played no part in those cases and no judgments have been delivered.

On 22 December, the Court of Appeal in Northern Ireland determined that section 30, in its application to those who were serving prisoners at the time the provision became law only, breaches Article 7 and made a declaration of incompatibility. The Court determined the offenders could not appeal their sentences, and there was no other remedy for these offenders apart from Parliament changing the law. The new release provisions continue to apply to them, and all other retrospectively affected terrorist offenders.

On 25 February 2022 an Application for Permission to Appeal was presented to the UK Supreme Court and was granted on 17 May 2022. The appeal before the Supreme Court is due to be heard on 12 January 2023.

Annex A: All declarations of incompatibility

As there is no official database of declarations of incompatibility, this annex lists all the cases in which a declaration has been made.

Since the HRA came into force on 2 October 2000 until the end of July 2022, 46 declarations of incompatibility have been made.

Of these, 40 have been fully addressed:

- 10 have been overturned on appeal (and there is no scope for further appeal);
- 5 related to provisions that had already been amended by primary legislation at the time of the declaration;
- 8 have been addressed by Remedial Order;
- 16 have been addressed by primary or secondary legislation (other than by Remedial Order);
- 1 has been addressed by various measures;

and 6 are ongoing:

- 4 the Government has proposed to address by Remedial Order;
- 2 are currently subject to appeal.

The cases in each category are listed below. They are numbered in chronological order of the initial making of a declaration of incompatibility (rather than any appeals). The 2019 report was the last to give full details of all cases (at that time, cases 1–42). For cases which have been fully addressed since then, the report containing the final update is indicated in superscript after the case name in the list below.[41]

Overturned on appeal

1. R (on the application of Alconbury Developments Ltd.) v Secretary of State for the Environment, Transport and the Regions
   Administrative Court; [2001] HRLR 2; 13 December 2000

3. Wilson v First County Trust Ltd (no.2)
   Court of Appeal; [2001] EWCA Civ 633; 2 May 2001

[41] https://www.gov.uk/government/collections/human-rights-the-governments-response-to-human-rights-judgments

6. Matthews v Ministry of Defence
Queen's Bench Division; [2002] EWHC 13 (QB); 22 January 2002

10. R (on the application of Uttley) v Secretary of State for the Home Department
Administrative Court; [2003] EWHC 950 (Admin); 8 April 2003

15. R (on the application of MH) v Secretary of State for Health
Court of Appeal; [2004] EWCA Civ 1609; 3 December 2004

20. Re MB
Administrative Court; [2006] EWHC 1000 (Admin); 12 April 2006

24. Nasseri v Secretary of State for the Home Department
Administrative Court; [2007] EWHC 1548 (Admin); 2 July 2007

25. R (on the application of Wayne Thomas Black) v Secretary of State for Justice
Court of Appeal; [2008] EWCA Civ 359; 15 April 2008

31. Northern Ireland Human Rights Commission, Re Judicial Review
Queen's Bench Division (NI); [2015] NIQB 102; 16 December 2015

42. R (on the application of the Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department(2022 report)
Administrative Court; [2019] EWHC 452 (Admin); 1 March 2019

Provisions already amended by primary legislation

13. R (on the application of Wilkinson) v Inland Revenue Commissioners
Court of Appeal; [2003] EWCA Civ 814; 18 June 2003

14. R (on the application of Hooper and others) v Secretary of State for Work and Pensions
Court of Appeal; [2003] EWCA Civ 875; 18 June 2003

21. R (on the application of (1) June Wright; (2) Khemraj Jummun; (3) Mary Quinn; (4) Barbara Gambier) v (1) Secretary of State for Health; (2) Secretary of State for Education & Skills
Administrative Court; [2006] EWHC 2886 (Admin); 16 November 2006

22. R (on the application of Clift) v Secretary of State for the Home Department; Secretary of State for the Home Department v Hindawi and another
House of Lords; [2006] UKHL 54; 13 December 2006

32. David Miranda v Secretary of State for the Home Department
Court of Appeal; [2016] EWCA Civ 6; 19 January 2016

Addressed by Remedial Order

2. R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & The Secretary of State for Health
Court of Appeal; [2001] EWCA Civ 415; 28 March 2001

19. R (on the application of Baiai and others) v Secretary of State for the Home Department and another
Administrative Court; [2006] EWHC 823 (Admin); 10 April 2006

26. R (on the application of (1) F; (2) Angus Aubrey Thompson) v Secretary of State for the Home Department
Administrative Court; [2008] EWHC 3170 (Admin); 19 December 2008

29. R (on the application of Reilly (no.2) and Hewstone) v Secretary of State for Work and Pensions
Administrative Court; [2014] EWHC 2182; 4 July 2014

35. Z (A Child) (no.2)
Family Court; [2016] EWHC 1191 (Fam); 20 May 2016

36. R (on the application of Johnson) v Secretary of State for the Home Department
Supreme Court; [2016] UKSC 56; 19 October 2016

37. Consent Order in R (on the application of David Fenton Bangs) v Secretary of State for the Home Department
Administrative Court; 4 July 2017

38. Smith v (1) Lancashire Teaching Hospitals NHS Foundation Trust; (2) Lancashire Care NHS Foundation Trust; (3) Secretary of State for Justice(2020 report)
Court of Appeal; [2017] EWCA Civ 1916; 28 November 2017

Addressed by other primary or secondary legislation

4. McR's Application for Judicial Review
Queen's Bench Division (NI); [2002] NIQB 58; 15 January 2002

5. International Transport Roth GmbH v Secretary of State for the Home Department
Court of Appeal; [2002] EWCA Civ 158; 22 February 2002

7. R (on the application of Anderson) v Secretary of State for the Home Department
House of Lords; [2002] UKHL 46; 25 November 2002

8. R (on the application of D) v Secretary of State for the Home Department
Administrative Court; [2002] EWHC 2805 (Admin); 19 December 2002

9. Blood and Tarbuck v Secretary of State for Health
Unreported; 28 February 2003

11. Bellinger v Bellinger
House of Lords; [2003] UKHL 21; 10 April 2003

12. R (on the application of M) v Secretary of State for Health
Administrative Court; [2003] EWHC 1094 (Admin);16 April 2003

16. A and others v Secretary of State for the Home Department
House of Lords; [2004] UKHL 56; 16 December 2004

17. R (on the application of Sylviane Pierrette Morris) v Westminster City Council and First Secretary of State (no.3)
Court of Appeal; [2005] EWCA Civ 1184; 14 October 2005

18. R (on the application of Gabaj) v First Secretary of State
Administrative Court; unreported; 28 March 2006

27. R (on the application of Royal College of Nursing and others) v Secretary of State for Home Department
Administrative Court; [2010] EWHC 2761; 10 November 2010

28. R (on the application of T, JB and AW) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice
Court of Appeal; [2013] EWCA Civ 25; 29 January 2013

33. R (on the application of P and A) v Secretary of State for the Home Department and Others(2020 report)
Administrative Court; [2016] EWHC 89 (Admin); 22 January 2016

34. R (on the application of G) v Constable of Surrey Police & Others(2020 report)
Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016

39. Steinfeld and another v Secretary of State for International Development(2020 report)
Supreme Court; [2018] UKSC 32; 27 June 2018

40. K (A Child) v Secretary of State for the Home Department(2022 report)
Administrative Court; [2018] EWHC 1834 (Admin); 18 July 2018

Addressed by various measures

23. Smith v Scott(2021 report)
Registration Appeal Court (Scotland); [2007] CSIH 9; 24 January 2007

Proposed to address by Remedial Order

30. Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya
Court of Appeal; [2015] EWCA Civ 33; 5 February 2015

41. Siobhan McLaughlin, Re Judicial Review (Northern Ireland)
Supreme Court; [2018] UKSC 48; 30 August 2018

43. Jackson and Simpson v Secretary of State for Work and Pensions
High Court; 7 February 2020

44. In the matter of an application by 'JR111' for judicial review (ruling on remedy)
Queen's Bench Division (NI); substantive judgment [2021] NIQB 48 on 13 May 2021; ruling on remedy 21 May 2021

Subject to appeal

45. In the matter of an application by JR123 for judicial review
Queen's Bench Division (NI); [2021] NIQB 97; 1 November 2021

46. R v Marks, Morgan, Lynch and Heaney
Court of Appeal (NI); [2021] NICA 67; 22 December 2021

Annex B: Statistical information on implementation of ECtHR judgments

Data in tables 1 and 2 are taken from the Annual Reports of the Committee of Ministers, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights' (http://www.coe.int/en/web/execution/annual-reports). The source table is indicated in brackets. 'Case' in these statistics refers to a judgment or decision of the ECtHR (including strike-out decisions following a friendly settlement).

Table 1: Statistics on UK cases

New cases under supervision (B.3)	**2019**	**2020**	**2021**
All cases	7	4	10
of which leading cases	4	2	6
Cases closed by final resolution (D.3)	**2019**	**2020**	**2021**
All cases	3	5	9
of which leading cases	1	2	3
Pending cases at year end (C.3)	**2019**	**2020**	**2021**
All cases	16	15	16
of which leading cases	8	8	11
Leading cases by time pending (F.1)	**2019**	**2020**	**2021**
Pending <2 years	3	4	5
Pending 2–5 years	1	1	1
Pending >5 years	3	3	3
Payment of just satisfaction (G.2)	**2019**	**2020**	**2021**
Paid within deadline	4	3	4
Paid late	0	1	1
Awaiting confirmation of payment	2	1	5
Just satisfaction (G.1)	**2019**	**2020**	**2021**
Total awarded (€)	74,883	102,104	588,429

Table 2: Pending cases at year end by State (C.3)

Ranking by 2021 pending cases	State	All pending cases			of which leading cases		
		2019	2020	2021	2019	2020	2021
1	Russian Federation	1,663	1,789	**1,942**	219	217	217
2	Ukraine	591	567	**638**	119	107	106
3	Turkey	689	624	**510**	155	149	139
4	Romania	284	347	**409**	76	89	106
5	Azerbaijan	189	235	**271**	34	45	49
6	Hungary	266	276	**265**	48	54	47
7=	Italy	198	184	**170**	56	57	58
	Republic of Moldova	173	154	**170**	53	49	51
9	Bulgaria	170	166	**164**	79	83	92
10	Poland	98	89	**97**	30	33	38
11	Greece	195	120	**93**	43	39	34
12	Croatia	84	73	**79**	37	23	25
13	Serbia	57	33	**76**	13	12	12
14=	Georgia	47	53	**63**	19	23	27
	Slovak Republic	32	31	**63**	12	14	20
16	Armenia	38	42	**50**	19	19	24
17	North Macedonia	35	40	**47**	14	15	15
18	Malta	31	33	**39**	13	11	13
19=	Belgium	30	31	**37**	18	18	21
	Spain	24	30	**37**	16	18	23
21	Bosnia and Herzegovina	39	34	**34**	10	11	12
22=	France	36	35	**32**	19	26	25
	Lithuania	42	34	**32**	21	21	16
24	Albania	36	29	**31**	11	13	14
25	Portugal	33	34	**28**	17	21	17
26	Finland	29	31	**18**	9	11	9
27=	Germany	20	12	**16**	14	10	13
	United Kingdom	16	15	**16**	8	8	11
29	Cyprus	8	10	**13**	7	7	10

Ranking by 2021 pending cases	State	All pending cases			of which leading cases		
		2019	2020	2021	2019	2020	2021
30=	Austria	17	13	**12**	6	5	6
	Norway	2	6	**12**	2	2	2
32	Netherlands	6	5	**10**	5	5	8
33=	Latvia	8	8	**9**	6	8	7
	Switzerland	8	8	**9**	7	8	8
35	Montenegro	4	7	**7**	3	5	5
36=	Czech Republic	3	4	**6**	2	2	2
	Iceland	6	12	**6**	3	3	2
38	Ireland	2	3	**5**	2	2	2
39=	Denmark	1	1	**4**	1	1	3
	Slovenia	13	7	**4**	12	7	4
41	San Marino	0	1	**3**	0	1	2
42=	Liechtenstein	2	2	**2**	1	1	1
	Sweden	3	3	**2**	3	3	2
44=	Estonia	2	2	**1**	2	2	1
	Monaco	0	0	**1**	0	0	1
46=	Andorra	0	0	**0**	0	0	0
	Luxembourg	1	0	**0**	1	0	0
	Total	**5,231**	**5,233**	**5,533**	**1,245**	**1,258**	**1,300**

Table 3: Judgments finding a violation against the UK under the supervision of the Committee of Ministers at the end of July 2022

Case name	Application	Final judgment
Enhanced Procedure		
McKerr group		
McKerr	28883/95	4 August 2001
Kelly and Others	30054/96	4 August 2001
Shanaghan	37715/97	4 August 2001
Finucane	29178/95	1 October 2003
McCaughey and Others	43098/09	16 October 2013
Gaughran	45245/15	13 June 2020
VCL and AN	77587/12 and 74603/12	5 July 2021
Standard Procedure		
S and Marper	30562/04 and 30566/04	4 December 2008
Catt	43514/15	24 April 2019
Big Brother Watch and Others	58170/13 etc.	25 May 2021
SW	87/18	22 September 2021
Pal	44261/19	28 February 2022

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