



Ministry
of Justice

Responding to human rights judgments

Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2019–2020

December 2020

CP 347



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the Government's response to human rights judgments
2019–2020

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of Her Majesty

December 2020

CP 347



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Introduction

This is the latest report to the Joint Committee on Human Rights setting out the Government's position on the implementation of adverse human rights judgments from the European Court of Human Rights (ECtHR) and the domestic courts.¹

This report covers the period August 2019 to July 2020 (but also notes some developments since then that took place before the date of publication). Following the approach in previous reports, it is divided into three sections:

- a general introduction, including **wider developments in human rights**;
- recent **ECtHR judgments** involving the UK and progress on the implementation of ECtHR judgments; and
- **declarations of incompatibility** in domestic cases and the Government's response.

The Government welcomes correspondence from the Joint Committee should it require further information on anything in this report.

¹ Previous reports are published at <https://www.gov.uk/government/collections/human-rights-the-governments-response-to-human-rights-judgments>

General comments

This paper focuses on two types of human rights judgment:

- **judgments of the European Court of Human Rights** in Strasbourg against the UK under the European Convention on Human Rights (ECHR); and
- **declarations of incompatibility** made by UK courts under section 4 of the Human Rights Act 1998 (HRA).

An important aspect of these judgments is that their implementation may require changes to legislation, policy, practice, or a combination of these.

European Court of Human Rights judgments

Under Article 46(1) of the ECHR, the UK is obliged to implement judgments of the ECtHR in any case to which it is a party. The implementation (or ‘execution’) of judgments of the ECtHR is overseen by the Committee of Ministers of the Council of Europe under Article 46(2).

The Committee of Ministers is a body on which every member State of the Council of Europe is represented. It is advised by a specialist Secretariat (the Department for the Execution of Judgments) in its work overseeing the implementation of judgments.

There are three parts to the implementation of an ECtHR judgment which finds there has been a violation:

- the payment of *just satisfaction*, a sum of money which the court may award to the applicant;
- other *individual measures*, required to put the applicant so far as possible in the position they would have been in, had the violation not occurred; and
- *general measures*, required to prevent the violation happening again or to put an end to an ongoing violation.

Past judgments can be found on the HUDOC database.² New judgments are announced a few days in advance on the ECtHR’s website.³

² <http://hudoc.echr.coe.int>

³ <http://www.echr.coe.int/Pages/home.aspx?p=home>

The Department for the Execution of Judgments has a website explaining the process of implementation⁴ and a database called HUDOC-EXEC which records details of the implementation of each judgment.⁵

Declarations of incompatibility

Under section 3 of the HRA, legislation must be read and given effect, so far as possible, in a way which is compatible with the Convention rights.⁶ If a higher court⁷ is satisfied that legislation⁸ is incompatible with a Convention right, it may make a declaration of incompatibility under section 4 of the HRA. Such declarations constitute a notification to Parliament that the legislation is incompatible with the Convention rights.

A declaration of incompatibility does not affect the continuing operation or enforcement of the legislation in question, nor does it bind the parties to the proceedings in which it is made.⁹ This respects the supremacy of Parliament in the making of the law. Under the HRA, there is no legal obligation on the Government to take remedial action following a declaration of incompatibility or on Parliament to accept any remedial measures the Government may propose.

There is no official database of declarations of incompatibility, but a summary of all declarations is provided in Annex A to this report.

Coordination of implementation

Lead responsibility for implementation of an adverse judgment rests with the relevant government department for each case, while the Ministry of Justice provides light-touch coordination of the process.

Following an adverse ECtHR judgment against the UK, the Ministry of Justice liaises with the lead department to provide oversight of and advice on the implementation process and to assist with the drafting of Action Plans and updates which are required by the Committee of Ministers in its role of supervising the execution of judgments. The Ministry

⁴ <http://www.coe.int/en/web/execution>

⁵ <http://hudoc.exec.coe.int>

⁶ The rights drawn from the ECHR listed in Schedule 1 to the HRA.

⁷ Of the level of the High Court or equivalent and above, as listed in section 4(5) of the HRA.

⁸ Either primary legislation, or subordinate legislation if the primary legislation under which it is made prevents removal of the incompatibility (except by revocation).

⁹ Section 4(6) of the HRA.

of Justice passes this information to the UK Delegation to the Council of Europe, which represents the UK at the Committee of Ministers' meetings.

It is not feasible for any one department to identify all the ECtHR judgments against other member States that may be relevant to the UK, so all departments are expected to identify judgments relevant to their area of work and disseminate them to bodies for which they are responsible as appropriate. The roles of the Foreign, Commonwealth and Development Office and the Ministry of Justice supplement and support this work.

When a new declaration of incompatibility is made in the domestic courts, the lead department is expected to bring it to the Joint Committee's attention. The Ministry of Justice encourages departments to update the Joint Committee regularly on their plans for responding to declarations of incompatibility.

Wider developments in human rights

The UK has a longstanding tradition of ensuring rights and liberties are protected domestically and of fulfilling our international human rights obligations. We have strong human rights protections within a comprehensive and well-established constitutional and legal system. In domestic law, rights are protected through the common law, the HRA and the devolution statutes as well as other legislation.

The Government will continue to protect and respect human rights and liberties both domestically, and through our international obligations. We fully intend to maintain our leading role in the promotion and protection of human rights, democracy, and the rule of law.

The Government is also committed to furthering the UK's status as a global, outward-looking nation, playing an active, leading role in the world. We will continue to support an international order in which rules govern state conduct, and to champion the universal values of freedom, democracy, tolerance and the rule of law. We will continue to call on other countries to comply with their international human rights obligations, and to take action to tackle human rights violations globally.

European Convention on Human Rights

The Council of Europe and the ECHR have a leading role in the promotion and protection of human rights, democracy and the rule of law in wider Europe. The UK is committed to membership of the ECHR.

We welcomed the adoption in April 2018 of the Copenhagen Declaration which carries forward the reform process of the Court given impetus by the Brighton Declaration under the UK's Chairmanship in 2012. Our priority is to strengthen the Court and the Convention system, both to improve the Court's efficiency in light of its continued backlog of pending applications, and to ensure that it can focus on the most important cases before it, underpinned by the principle of subsidiarity.

Independent Human Rights Act Review

On 7 December 2020, the Government launched an independent review to examine the framework of the HRA, how it is operating in practice and whether any change is required.

The HRA has been in force for 20 years and it is timely to undertake a review into its operation. The UK's constitutional framework has always evolved incrementally over time,

and it will continue evolving. We need to make sure that our human rights framework, as with the rest of our legal framework, develops and is refined to ensure it continues to meet the needs of the society it serves.

The review will look at two key themes:

- the relationship between domestic courts and the ECtHR;
- the impact of the HRA on the relationship between the judiciary, the executive and the legislature.

The panel will report back in summer 2021 and its report will be published, as will the Government's response.

Reporting to United Nations (UN) Human Rights Monitoring Bodies

The Government takes its international human rights obligations seriously and remains committed to playing a full role in UN reporting and dialogue processes. Through delivering our obligations, we strengthen the UK's ability to hold other States to account, and we demonstrate our commitment to protecting human rights globally.

The UK also remains fully committed to the Universal Periodic Review process,¹⁰ a unique mechanism for sharing best practice on human rights, and for promoting the continuous improvement of human rights on the ground.

As part of the monitoring process, the UK Government is committed to constructive engagement with the UK's National Human Rights Institutions and interested non-governmental organisations.

¹⁰ Details can be found at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

The UK at the ECtHR: statistics

The ECtHR publishes statistical reports for each calendar year. The following tables bring together data from these reports on the applications made against the UK at the ECtHR from its initial establishment in 1959 until the end of 2019, including the trend over the last ten years.¹¹

Applications have been on a general downward trend since 2010. By population, the UK has the fewest applications of all States at 5 per million. The number for all States combined is 53 per million.

Table 1. Applications against the UK allocated to a judicial formation¹²

| 1959–2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|-----------|-------|-------|-------|------|------|------|------|------|------|------|---------------|
| 15,219 | 2,745 | 1,542 | 1,702 | 908 | 720 | 575 | 372 | 415 | 354 | 344 | 24,896 |

Due to the time lag between an application being allocated for initial consideration and a decision being made on its admissibility, the number of applications declared inadmissible cannot be directly compared to newly allocated applications on a year-by-year basis. However, it is noteworthy that the total number declared inadmissible during the years 2010–2019 (9,958) is greater than the total number allocated in that period (9,677).

Table 2. Applications against the UK declared inadmissible or struck out¹³

| 1959–2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|-----------|-------|-------|-------|-------|-------|------|------|------|------|------|---------------|
| 12,854 | 1,175 | 1,028 | 2,047 | 1,633 | 1,970 | 533 | 360 | 507 | 358 | 347 | 22,812 |

¹¹ <http://echr.coe.int/Pages/home.aspx?p=reports>

¹² Source: Analysis of statistics 2019, pages 12 and 61, and previous reports. This is the first stage of consideration by the Court. Single judges can declare applications inadmissible or strike them out where this decision can be taken without further examination. By unanimity, Committees take similar decisions to single judges but can also declare an application admissible and give a judgment if the underlying question is already well-established in the case-law of the Court. Where neither a single judge nor a Committee has taken a decision or made a judgment, Chambers may decide on admissibility and merits.

¹³ Source: Analysis of statistics 2019, page 61, and previous reports.

The numbers of judgments and adverse judgments remain low.

Table 3. Judgments in UK cases (judgments finding violation)¹⁴

| 1959–2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|-----------|------|------|------|------|------|------|------|------|------|------|--------------|
| 422 | 21 | 19 | 24 | 13 | 14 | 13 | 14 | 5 | 2 | 5 | 552 |
| (257) | (14) | (8) | (10) | (8) | (4) | (4) | (7) | (2) | (1) | (5) | (320) |

The number of ongoing applications against the UK under consideration by the ECtHR continues to fall both in absolute terms and as a proportion of all States' applications. For comparison, the UK population comprises 8.0% of the population of all States (Analysis of statistics 2019, page 12).

Table 4. Ongoing caseload of the ECtHR at year end¹⁵

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|-------------------|--------|--------|--------|--------|--------|--------|--------|
| UK | 2,519 | 1,243 | 256 | 231 | 130 | 124 | 111 |
| Total | 99,891 | 69,924 | 64,834 | 79,750 | 56,262 | 56,365 | 59,813 |
| Proportion | 2.52% | 1.78% | 0.39% | 0.29% | 0.23% | 0.22% | 0.19% |

At the end of 2019, the UK was responsible for 16 (0.3%) of a total 5,231 pending cases before the Committee of Ministers (this includes both adverse judgments whose implementation is still being supervised and friendly settlements). This is lower than for other States with a similar population (see Annex B).¹⁶

Further statistics and the numbers of pending judgments for all States for the years 2017–2019 can be found in Annex B. This annex also lists all judgments that found a violation against the UK that were still under the supervision of the Committee of Ministers at the end of July 2020.

¹⁴ Source: Violations by Article and by State 2019 and previous reports; Violations by Article and by State 1959–2019 and previous reports. A judgment can cover more than one application.

¹⁵ Source: Analysis of statistics 2019, pages 13 and 61, and previous reports.

¹⁶ Source: 13th Annual Report of the Committee of Ministers, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights 2019', Table C.3. See <http://www.coe.int/en/web/execution/annual-reports>

Recent ECtHR judgments

Three judgments in UK cases became final during the period August 2019 – July 2020. Two of these found violations of the ECHR, requiring the Government to take measures to implement them:

- *JD and A* (32949/17, 34614/17) – violation of Article 14 with Article 1 of Protocol 1 Chamber (First Section). Final judgment on 24 February 2020
- *Gaughran* (45245/15) – violation of Article 8 Chamber (First Section). Final judgment on 13 June 2020

and one did not:

- *Yam* (31295/11) – no violation of Article 6 Chamber (First Section). Final judgment on 22 June 2020.

A further four applications were declared inadmissible in reasoned admissibility decisions.

The adverse judgments and the Government's response are summarised below.¹⁷

1. JD and A (32949/17, 34614/17)

Chamber (First Section) – violation of Article 14 with Article 1 of Protocol 1

Final judgment on 24 February 2020

The applications of JD and A were joined by the Court. No violation was found in respect of JD.

A lives in a three-bedroom house in the social rented sector with her son. Her son was conceived as a result of a violent sexual assault by a man known as X. In 2012, ten years after the assault, X contacted A and she was referred by the police to a “Sanctuary Scheme”. The scheme adapted the applicant's home to include a “panic room” where she and her son can retreat in the event of an attempted attack by X.

A receives Housing Benefit to cover the rent for her home. Following the introduction of Regulation B13 of Housing Benefit Regulations 2006 (SI 2006/2013) in 2012, the applicant's Housing Benefit was reduced by 14%, because she is considered to be under-occupying her home. Since the reduction, the applicant's Housing Benefit no longer meets the cost of her rent.

¹⁷ Full details can be found on HUDOC (<http://hudoc.echr.coe.int>) and HUDOC-EXEC (<http://hudoc.exec.coe.int>).

In making its decision the Court determined that there would have to be very weighty reasons to justify sex discrimination under Article 14. This is contrary to the decision of the UK Supreme Court on this issue which has previously decided that the correct justification test in an Article 14 discrimination case in relation to measures of economic or social strategy is the ‘manifestly without reasonable foundation’.

The Court found that in respect of A there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 because the aim of Regulation B13 (the removal of the spare room subsidy) was to encourage people to move and this conflicted with the aim of the Sanctuary Scheme to allow victims of gender-based violence to remain in their homes. The UK Government did not provide any weighty reasons to justify the prioritisation of the aim of the removal of the spare room subsidy scheme over that of enabling victims of domestic violence who benefitted from protection in Sanctuary Schemes to remain in their own homes safely and therefore the measure was not justified.

The Court awarded €10,000 in respect of non-pecuniary damages to A, which has been paid.

The Government is considering what further steps may be necessary as a result of the judgment. No final decisions have been taken. In the meantime, the applicant is in receipt of an award of Discretionary Housing Payment which mitigates any financial loss under the removal of the spare room subsidy.

The Government also notes that the approach taken by the Court to the justification test in an Article 14 discrimination case has now been referred to in a number of domestic cases and is likely to return to the Supreme Court soon. The Government would like to take account of the outcome of that domestic litigation in determining its response to the judgment in the case of A.

2. Gaughran (45245/15)

Chamber (First Section) – violation of Article 8

Final judgment on 13 June 2020

Mr Gaughran pleaded guilty in November 2008 to the offence of driving with excess alcohol at Newry Magistrates Court. He was thus a convicted person. His DNA profile, fingerprints and photograph (‘biometrics’) were taken. The regime in Northern Ireland relating to police powers allows these biometrics to be retained indefinitely. Mr Gaughran argued that the Police Service of Northern Ireland’s (PSNI) indefinite retention of his biometrics contravened his Article 8 rights. In 2015 the Supreme Court rejected his argument. He subsequently applied to the ECtHR, which heard the case in 2018.

The ECtHR unanimously found that the scheme allowing for the indefinite retention of the biometrics DNA profile, fingerprints and photograph of a person convicted of an offence was disproportionate and in violation of Article 8. In reaching this conclusion the ECtHR pointed to the lack of reference within the scheme to the seriousness of the offence or sufficient safeguards, including the absence of any real possibility of review of the retention.

The retention regime for DNA and fingerprints in England and Wales is very similar to that in Northern Ireland; the rules are set out in Part V of the Police and Criminal Act 1984 as amended by the Protections of Freedoms Act 2012. The regime allows (subject to limited exceptions) DNA and fingerprints of convicted persons to be retained indefinitely.

However, the Data Protection Act 2018 (DPA), which came into force in May 2018, requires periodic reviews of the retention of personal data, including biometrics, for law enforcement purposes (DPA 2018, Part 3, Chapter 2, Section 39). The DPA also provides for oversight by the Information Commissioner. The DPA applies to all parts of the UK. The *Gaughran* case was brought before the Courts prior to the DPA coming into force, so the DPA was not factored into the judgment.

Therefore, our view is that no change to legislation is required to implement the judgment, as although indefinite retention of biometrics without the possibility of review violated Article 8, that has now been addressed UK-wide by the Data Protection Act 2018.

UK public authorities (which includes law enforcement agencies) must ensure that their practices on data retention are consistent with data protection obligations and the ECHR. The Home Office will continue to work with the police to promote consistent compliance with the DPA and enable more efficient review of the retention of biometric data.

Judgments already under supervision before August 2019

The reporting year began with 15 judgments under the supervision of the Committee of Ministers.

In regard to four of these, the Government considered that all necessary measures had been taken and submitted Action Reports to the Committee of Ministers. The Committee of Ministers was also satisfied that all necessary measures had been taken and decided to close its supervision of these judgments:

- *MGN Ltd* (39401/04), final judgment on 18 April 2011, closed on 13 November 2019
- *Miller and Others* (70571/14 etc.), final judgment on 11 April 2019, closed on 11 December 2019
- *Beghal* (4755/16), final judgment on 28 May 2019, closed on 17 June 2020
- *VM (no. 2)* (62824/16), final judgment on 25 July 2019, closed on 17 June 2020.

Details of these judgments can be found in last year's report.¹⁸

The following judgments remain open:

- *McKerr group* of eight judgments (28883/95 etc.), first final judgments on 4 August 2001
- *S and Marper* (30562/04 and 30566/04), final judgment on 4 December 2008
- *Hammerton* (6287/10), final judgment on 12 September 2016
- *Catt* (43514/15), final judgment on 24 April 2019.

Details of the measures being taken to implement these judgments are set out below.

¹⁸ <https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2018-to-2019>

1. McKerr group (28883/95 etc.)

Chamber judgments – violation of Article 2

First final judgments on 4 August 2001

These cases concern investigations into the deaths of the applicants' next-of-kin in Northern Ireland in the 1980s and 1990s, either during security force operations or in circumstances giving rise to suspicion of collusion with those forces. The ECtHR was concerned with the obligations under Article 2 that require that there be an effective official investigation when individuals have been killed as a result of the use of force.

In the *McKerr* group of cases, the problems identified by the ECtHR as impacting on the effectiveness of the investigations related to issues identified with the police investigations which included, notably, a lack of independence of police officers investigating the incidents, defects in the police investigations and a lack of public scrutiny and information to the victims' families. Furthermore, the ECtHR identified a number of shortcomings in the inquest proceedings including the failure to comply with the requirement of promptness and expedition and the absence of legal aid for the victims' families. The *McShane* case also concerned a failure by the State to comply with its obligations under Article 34.

In *McCaughey and Others* and *Hemsworth* the ECtHR found that there had been excessive delay in the inquest proceedings which had concluded in 2012 and 2011 respectively (procedural violations of Article 2), caused variously by periods of inactivity; the quality and timeliness of the disclosure of material; and legal procedures necessary to clarify coronial law and practice. Under Article 46, the ECtHR indicated that the authorities had to take, as a matter of priority, all necessary and appropriate measures to ensure, in similar cases of killings by the security forces in Northern Ireland where inquests were pending, that the procedural requirements of Article 2 would be complied with expeditiously.

Steps taken by the UK Government and previous decisions of the Committee

General measures

Following the judgments in these cases general measures to respond to the issues raised by the ECtHR were placed under ten measures. These measures are summarised as follows:

- Lack of independence of the investigating police officers from security forces or police officers implicated in the incidents
- Lack of public scrutiny of and information to the victims' families concerning the reasons for decisions not to prosecute
- Defects in the police investigations

- The inquest procedure did not allow for any verdict or findings which could play an effective role in securing prosecution in respect of any criminal offence which might have been disclosed.
- The soldiers or police officers who shot the deceased could not be required to attend the inquest as witnesses.
- Absence of legal aid for the representation of the victim's family
- Non-disclosure of witness statements prior to the witnesses' appearance at the inquest prejudiced the ability of the applicants to participate in the inquest and contributed to long adjournments in the proceedings.
- The scope of the inquest procedure excluded the concerns of collusion by security force personnel in the killing.
- The public interest immunity certificate in *McKerr* had the effect of preventing the inquest examining matters which were relevant to the outstanding issues in the case.
- The inquest proceedings did not commence promptly and were not pursued with reasonable expedition.

Supervision of nine of these measures was closed by the Committee of Ministers in a series of decisions and interim resolutions between 2005 and 2009 which are not repeated in detail here. The outstanding issue concerns the lack of independence of the investigating police officers from the security forces or police officers implicated in the incidents.

A number of steps have been taken by the UK Government to address the lack of independence in those cases.

Police Ombudsman

In November 2000, an independent Office of the Police Ombudsman (OPONI) was established in Northern Ireland and provides an independent, impartial system for the handling of complaints about the conduct of police officers. It is to be noted in particular that:

- where there is a "serious complaint" (defined in section 50(1) of the Police (NI) Act 1998 as including any case where the complaint relates to the death or serious injury of any person), the Ombudsman is obliged by section 54(2) to investigate it in accordance with section 56, ie by appointing one of her officers to investigate it; and
- where the Ombudsman determines that a criminal offence may have been committed by a police officer, the Ombudsman is required by section 58(2) of the 1998 Act to send a report to the Director of Public Prosecutions together with any appropriate recommendations.

Where it appears that the conduct of a member of the police service may have resulted in the death of a person the Chief Constable of the Police Service of Northern Ireland (PSNI) is required to refer the matter to the Police Ombudsman. Work is ongoing in response to recommendations made in April of this year by the Criminal Justice Inspection Northern

Ireland (CJINI) report into methods used by the PSNI to disclose information in respect of historic cases to the Police Ombudsman. A revised memorandum of understanding governing the working relationship between the Ombudsman and PSNI was published on 12 August 2020 and has come into immediate effect.¹⁹

Since 2010, an Historical Investigations Directorate within the Police Ombudsman has been tasked with looking at matters where there are allegations that members of the police may have been responsible for deaths or serious criminality in the past. It has approximately 25 staff, drawn from a variety of professional backgrounds, including those with an expertise of investigation and complaint handling. Its work is particularly focused on the period of the Troubles ending in 1998 (therefore covering the time period in which all the relevant deaths occurred).

The Police Ombudsman's budget has consistently been one of the most protected by the Department of Justice in Northern Ireland and, in 2019–20, the Ombudsman has been provided with a resource budget uplift of 2%. In addition, the DoJ made available additional funding of £526,000 in 2017–18 and £100,000 in 2018–19 to fund requests from the Ombudsman in respect of investigations into Troubles-related serious crime. Mrs Marie Anderson was appointed as the new Police Ombudsman for Northern Ireland and began her seven-year term in July 2019.

Police Investigations

The investigation of matters relating to the conduct of the military or of the security services and any suspected involvement in the death of a person is the responsibility of the PSNI.

The PSNI is hierarchically and institutionally independent of the former Royal Ulster Constabulary and military although it is noted that the practical independence of the police to investigate certain deaths remains the subject of litigation in the domestic courts including an appeal to the UK Supreme Court.²⁰ The Chief Constable of the PSNI is very conscious of the need to ensure that, in appropriate cases, an incident involving the security forces is investigated by persons who are independent of those implicated in the incident and has powers at his disposal to ensure this is the case. Under Section 98(1) of the Police Act 1996, where one police service may provide aid to another, the Chief Constable also has the power to appoint independent officers from a police service in Great Britain to carry out an investigation into any incident within the PSNI's remit exercising all the necessary powers and privileges of police officers of the PSNI, to ensure an effective investigation takes place.

¹⁹ <https://www.policeombudsman.org/getmedia/d0131758-42fc-4155-bfe6-a661e6787e8b/MOU-between-PSNI-and-PONI-re-Disclosure-of-Information-11-August-2020.pdf>

²⁰ Case No. UKSC 2018/0154

As demonstrated by recent referrals (for example, to former Chief Constable of Bedfordshire police, Jon Boutcher), investigative teams may be drawn from across UK enforcement services and can explicitly exclude personnel who are serving in, or have previously served in, the Royal Ulster Constabulary, PSNI, Ministry of Defence or Security Services or who might otherwise have a conflict of interest depending on the specific circumstances of any investigation. In the light of the judgments of the Court, the Chief Constable remains mindful of the need to make use of this power in appropriate cases.

It is therefore the position of the UK that the necessary structures and procedures are in place within the UK (and specifically Northern Ireland) criminal justice system to secure the requisite independence of investigating police officers from those implicated in the incidents.

The UK Government has reiterated its commitment to reforming the current approach to addressing the legacy of Northern Ireland's past. Further discussions with the Northern Ireland parties, Irish Government and other key stakeholders will need to take place before progress can be made to address these complex and sensitive issues and help Northern Ireland society move forward.

Individual measures

The position in respect of the individual cases and measures is set out below. Two of the cases are awaiting an inquest and the latest position on the implementation of the Lord Chief Justice's plan for legacy inquest reform is also set out below.

Legacy inquest reform

On 28 February 2019, the Northern Ireland Department of Justice announced funding for an initiative to support a significant expansion of capacity to clear outstanding legacy inquests, as proposed by the Lord Chief Justice of Northern Ireland in 2016. These proposals were developed in consultation with the international human rights community, including the Council of Europe Commissioner for Human Rights and the United Nations' Special Rapporteur, about the principles that should underpin an Article 2 compliant model for dealing with legacy cases.

The intention was to conclude the current caseload of 52 outstanding inquests relating to 93 deaths, within a five-year period following an initial set-up phase lasting for one year (2019–20). The 52 inquests are made up as follows: one inquest in which findings have been given and a final legal ruling is awaited; five inquests (the Ballymurphy series) in which findings are awaited; two in which hearings have commenced and are adjourned; and 44 which are pending. These cases, which relate to deaths between the 1970s and 2000s, cover some of the most sensitive, complex and high-profile incidents during the Troubles.

The Legacy Inquest project has been operational for 12 months. The set-up year of the project (Year zero) has now concluded. The project is currently proceeding according to plan and budget.

A new Legacy Inquest Unit (LIU) was established within the Northern Ireland Courts and Tribunals Service in 2019–20 to support delivery of legacy inquests, under the remit of the Lord Chief Justice as President of the Coroners' Courts. The Legacy Inquest Unit is now part of the Lord Chief Justice's Office. The Unit is supported by increased capacity in the PSNI, the Public Prosecution Service and other justice agencies.

Delivery of Year 1 inquests has been adversely impacted by Covid-19. In accordance with the Lord Chief Justice's direction on 12 May 2020, all inquests, including legacy inquests, stand adjourned, however, inquests are being listed for hearing where this is possible and to date, one non-legacy inquest has proceeded since pandemic-related measures were introduced.

The impact of the pandemic on witnesses, many of whom are elderly, and on the capacity of all agencies concerned to progress matters such as disclosure preparation, has meant that Year 1 inquests have been, and will continue to be, delayed. This will have an impact on the timeline for the Five Year Plan; however, because the full impact of the pandemic on legacy inquests is not yet known, the overall impact on the timeline cannot yet be assessed.

Additional reparation work is ongoing in each Year 1 inquest albeit that there are Covid-19-related barriers to progress, including limitations on the capability of disclosure providers to provide disclosure and the practical difficulties around interviewing and taking evidence from witnesses, in particular elderly witnesses.

Assessments of feasibility of listing legacy inquests are made on an ongoing basis as preparations proceed and preliminary hearings are held. The LIU will continue to work with the Presiding Coroner, Mr Justice Huddleston, on recovery planning.

McKerr

The McKerr case is subject to on-going preparation for inquest in relation to disclosure of documents and other materials that date back to 1976. The case is one of the 44 inquests included as part of the Lord Chief Justice's five year plan for disposing of the remaining legacy inquests relating to the Troubles in Northern Ireland. The case has not yet been listed. A significant amount of disclosure has taken place in this case with over 100 folders of documents received by the Coroner to date.

Shanaghan

An inquest was carried out following the incident in August 1991 and there has been no referral from the Attorney General for a fresh inquest.

In relation to the Office of the Police Ombudsman for Northern Ireland investigation, the Shanaghan family and their CAJ representatives are in contact with the Ombudsman's office. This case is a component of the Ombudsman's 'Operation Greenwich' investigation. It is anticipated that the Police Ombudsman will publish a public statement detailing actions, decisions and determinations in respect of this Operation. Regrettably, in February 2019 it was established that the PSNI had not disclosed all relevant information to the Ombudsman as the result of a combination of human error arising from a lack of knowledge and experience and the complex challenges associated with voluminous material stored in various places and on a range of media and archaic IT systems. The difficulties encountered concerning disclosure, coupled with a pending judgment from the Court of Appeal, have resulted in an indeterminate delay in the Ombudsman's ability to release a public statement dealing with the murder of Patrick Shanaghan. The Police Ombudsman has kept the families up to date.

Jordan

On 4 January 1995 an inquest commenced but was adjourned shortly afterwards. On 4 May 2001, the ECtHR upheld the complaint and awarded Mr Jordan £10,000 in respect of non-pecuniary damages together with costs and expenses. A fresh inquest commenced on 24 September 2012 and concluded on 26 October 2012 but the verdict was quashed following a judicial review. A subsequent appeal against that decision was dismissed in 2014. A further inquest commenced in 2016 and a verdict was delivered on 9 November 2016. That verdict (that it was not possible to determine with certainty the circumstances in which Mr Jordan died) was challenged in judicial review proceedings brought by Teresa Jordan, Pearse Jordan's mother, but without success.

A number of proceedings have been brought relating to the issue of delay and the award of damages. In 2013, Hugh Jordan had brought a judicial review seeking declarations that the Coroner and the PSNI had been responsible for the delay in the commencement of the inquest together with awards of damages in respect of the delay from 4 May 2001 to 24 September 2012. The Northern Ireland High Court upheld the claim against the PSNI finding that there had been a series of failures to disclose relevant information until compelled to do so, and also a delay in commencing a process of risk assessment relating to the anonymity of witnesses. On 31 January 2014, the trial judge made a declaration that the PSNI delayed progress in the Pearse Jordan inquest in breach of Article 2 of the ECHR and contrary to section 6 of the HRA and awarded damages of £7,500. The parties appealed against the decision but proceedings were stayed on 10 June 2017. On 23 October 2017 the Court of Appeal lifted the stay and the appeal was heard on 31 May 2018. At that time there was an outstanding appeal to the Supreme Court from the order staying the proceedings. Judgment was delivered by the Supreme Court on 6 March 2019 when it allowed the appeal on the basis that the Court of Appeal had not taken into account the question of proportionality and if it had done so might have not reached the same conclusion. On 15 November 2019, the Court of Appeal allowed an appeal by the

PSNI against the award of damages for delay in progressing the Pearse Jordan inquest and reduced the award from £7,500 to £5,000.

The inquests have concluded and no further investigative steps are pending in this case.

Kelly and Others

An inquest took place following the incident on 8 May 1987, and in 2011 there was an HET investigation. Following an announcement by the Advocate General's decision on 23 September 2015 that new inquests into the Loughgall deaths are justified the case became part of the Lord Chief Justice's plan to resolve legacy inquests. The case has not yet been listed although the PSNI and MOD have commenced the collation of materials in preparation for the disclosure exercise.

The Police Ombudsman has also received a number of complaints associated with the incident at Loughhall which form part of its investigative remit.

Hemsworth

The inquest, sitting with a jury, took place on 16 May 2011. It made findings as to the cause of death and those likely to be responsible, as a result of which the coroner referred the matter to the Public Prosecution Service (PPS) to look into whether any prosecutions should be pursued. The inquest findings were not challenged by the family; however, the case was referred to the Police Ombudsman in relation to police conduct. Investigation of this referral is now complete. The Office of the Police Ombudsman published a public statement in relation to the circumstances surrounding the death of Mr Hemsworth on 24 November 2016.

McCaughey and Grew

The inquest, also sitting with a jury, was held between 12 March and 2 May 2012. It gave a narrative verdict, many aspects of which next of kin sought to challenge through judicial review. Following refusal to grant leave for hearing on a number of grounds by the Judicial Review court, the Court of Appeal granted leave for hearing. In April 2015, the Judicial Review Court delivered judgment *ex tempore* in which the Coroner's decisions and inquest findings were upheld. Further requests for permission to appeal the decision was considered by the higher courts and ultimately refused by the Supreme Court on the 14 December 2017.

Sally Gribben, the sister of Martin McCaughey, has brought a fresh application before the ECtHR alleging a breach of her Article 2 rights by the UK. Questions to the parties were communicated by the Court on 7 July 2020.

Finucane

On 27 February 2019, the United Kingdom Supreme Court gave its judgment in the matter of an application by Mrs Geraldine Finucane for Judicial Review (Northern Ireland).

In its submission of 21 June 2019 to the Committee of Ministers, the UK Government summarised the *Finucane* case and the Supreme Court judgment. In respect of the issues regarding Article 2 and the application of the HRA, the Supreme Court found as follows:

“there has not been an article 2 compliant inquiry into the death of Patrick Finucane. It does not follow that a public inquiry of the type which the appellant seeks must be ordered. It is for the state to decide, in light of the incapacity of [the previous reviews and inquiries] to meet the procedural requirement of article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.” (para. 153)

On 30 November 2020, the Secretary of State for Northern Ireland set out in a statement to Parliament the next steps in this matter. A copy of that statement and the accompanying document providing further detail about the nature and scope of previous investigations where relevant to the issues identified by the Supreme Court are available online.²¹

As set out in that statement the Secretary of State does not intend to establish a public inquiry into this case at this time whilst the existing Police Ombudsman investigations and an upcoming review process by the PSNI proceed. The Government will assess whether there is anything further that needs to be done with respect to the Supreme Court judgment and obligations under Article 2 in light of the PSNI and Police Ombudsman processes.

The *McKerr* group remains under the supervision of the Committee of Ministers.

²¹ <https://www.gov.uk/government/speeches/secretary-of-state-outlines-way-forward-in-pat-finucane-case> and <https://www.gov.uk/government/news/uk-government-response-to-judgment-of-the-supreme-court-of-the-united-kingdom-in-the-matter-of-an-application-by-geraldine-finucane-for-judicial-revie> [sic]

2. S and Marper (30562/04 and 30566/04)

Grand Chamber – violation of Article 8

Final judgment on 4 December 2008

The applicants, both of whom had been arrested for but not convicted of criminal offences, sought to have their DNA samples, profiles and fingerprints removed from police records. The refusal of the police to delete this information was upheld by all domestic courts up to the House of Lords. However, on 4 December 2008 the Grand Chamber ruled the blanket policy of retaining this information from all those arrested or charged but not convicted of an offence was disproportionate and therefore unjustifiable under Article 8.

The Government brought forward legislative proposals to address the issue in England and Wales, and across the UK in respect of material collected under counter-terrorism powers, in the Protection of Freedoms Act 2012 (PoFA) which received Royal Assent on 1 May 2012. The legislation adopted the protections of the Scottish model for the retention of DNA and fingerprints.

The Government has confirmed that in England and Wales, DNA profiles and fingerprints which can no longer be retained under the provisions of PoFA have been removed from the national databases. This was completed by 31 October 2013, the date on which PoFA was brought into force.

The Northern Ireland Department of Justice (DoJ) was unable to secure the necessary legislative consent motion to allow the extension of PoFA to Northern Ireland in respect of material collected under policing powers there. Instead, the DoJ brought forward broadly similar provision in the Criminal Justice Act (Northern Ireland) 2013 (CJA), which received Royal Assent on 25 April 2013. However, the biometric retention provisions of CJA remain uncommenced (for reasons set out below).

The DoJ has consulted on a series of proposed changes to the retention framework in CJA, which it hopes to legislate for in the coming year.

In light of the continued delay commencing CJA, in March 2020 the Police Service of Northern Ireland (PSNI) took the decision to suspend biometric deletion on a non-statutory basis and to await full legislative commencement of the CJA.

As the provisions of both PoFA and CJA require the destruction of a large volume of existing DNA and fingerprints, there is a risk that future investigations into Troubles-related deaths in Northern Ireland would be undermined should such material be destroyed.

The UK Government proposed to mitigate this risk by introducing statutory provision to allow for the retention of a copy of the relevant material for such investigations. The UK

Government has made provision through a transitional order to enable authorities in Northern Ireland to retain biometric data collected under counter-terrorism powers in Northern Ireland before 31 October 2013 on a temporary basis, pending the proposed statutory provision.

The UK Government has taken steps to renew this transitional order so that such material can continue to be held until October 2022 and primary legislation is put in place.

Once such statutory provision has been made, the DoJ will work to bring the collective provisions of CJA into force. The PSNI will enter into a retention regime that meets the requirements of the *S and Marper* ruling. As such, the legislation to allow the taking and use of biometric data will need to be sequenced with the commencement of CJA.

3. Hammerton (6287/10)

Chamber (First Section) – violation of Articles 6 and 13

Final judgment on 12 September 2016

The applicant was committed to prison for three months for contempt of court for breach of an injunction and undertaking. He was not legally represented at the committal hearing. He was released after six weeks and appealed against the decision. The Court of Appeal quashed the finding of contempt and the sentence, finding that he had spent extra time in prison as a result of procedural errors during his committal proceedings, which were such that his rights under Article 6 were breached.

The applicant sought damages in the High Court for his detention. Section 8 of the HRA allows a domestic court to award damages when a public authority has breached a person's Convention rights. However, section 9(3) of the HRA precludes damages in respect of judicial acts done in good faith, except when Article 5 has been breached and damages are required to satisfy Article 5(5).

The High Court held that if the applicant had had legal representation, the period that he spent in detention would have been significantly shorter. However, the court found that his detention had not been so obvious an irregularity as to breach Article 5. The court therefore could not award damages under the HRA for the extra time spent in prison.

The ECtHR held that there had been a violation of Article 6 and adopted the finding of the domestic courts that the applicant had spent extra time in prison as a result. The ECtHR also held that there had been a violation of Article 13 on the basis that he had been unable to obtain damages domestically.

The Government considers that no legislative changes are required in respect of the Article 6 violation, which was due to a procedural error and a failure to follow guidance.

To address the finding of an Article 13 violation, the Government decided to amend section 9 of the HRA to allow an award of damages in a new set of circumstances. On 16 July 2018, the Government laid a paper with a draft of a proposed Remedial Order to make this amendment.

The Joint Committee published its report on the proposal on 21 November 2018. It was of the view that that proposed amendment did not fully remove the incompatibility of section 9(3) of the HRA with Article 13. The Government accepted that other situations could arise, outside proceedings for contempt of court, where a judicial act done in good faith could potentially amount to a breach of Article 6; where that breach could result in the victim spending time in detention when they would otherwise not have done, or spending

longer in detention than they would otherwise have done; and where damages would be unavailable, contrary to Article 13.

The Government therefore redrafted the Remedial Order to amend section 9(3) of the HRA to enable courts to award damages to compensate a person in respect of a judicial act done in good faith in the following circumstances, in addition to the provision for a breach of Article 5:

- the judicial act is incompatible with Article 6, and
- the breach of Article 6 causes the person to be (i) detained when they would not otherwise have been, or (ii) subjected to a longer period of detention than they would otherwise have been.

The Government laid its response and a redrafted Remedial Order on 15 October 2019.

Following the Joint Committee's consideration of the draft Remedial Order and its recommendation that it be approved by Parliament, it received Parliamentary approval, was made, and came into force on 21 October 2020.²²

The Government considers that no further general measures are required and will submit an Action Report to the Committee of Ministers requesting that it close its supervision of the judgment.

²² <https://www.legislation.gov.uk/ukxi/2020/1160/made>

4. Catt (43514/15)

Chamber (First Section) – violation of Article 8

Final judgment on 24 April 2019

The applicant was an elderly pacifist who participated in demonstrations including protests organised by a group called Smash EDO. Whilst he had no criminal record and was not considered a danger to anyone, the protests involved disorder and criminality and information about the protests and members of Smash EDO was collected by the police and held on the database referred to in the proceedings as the domestic extremism database.

In 2010, the applicant requested that information relating to his attendance at demonstrations and events, mostly related to Smash EDO, between 2005 and 2009 be deleted from the database. The request was initially refused; however, following a review in 2012, records that referred primarily to him were deleted. Entries that made incidental reference to him did, however, continue to be retained on the database. He challenged this, arguing that retaining the data was not necessary within the meaning of Article 8.

In March 2015 the Supreme Court held that the collection and retention of this information was in accordance with the law and proportionate, in particular, the invasion of privacy had been minor and the information was not intimate or sensitive. It found that there were good policing reasons for collecting and retaining such data and that there were sufficient safeguards in place as it was periodically reviewed for retention or deletion.

The ECtHR accepted the applicant's complaint, finding a violation of his Article 8 rights. The ECtHR agreed that there were good policing reasons why such data had to be collected and in the case of the applicant it had been justified because Smash EDO's activities were known to be violent and potentially criminal. However, they expressed concerns about the continuing retention of the data, given that there was no pressing need, after a time, to retain the data relating to him.

The ECtHR considered that the continued retention of data in the applicant's case had been disproportionate because it revealed political opinions requiring enhanced protection, it had been accepted he did not pose a threat (taking account of his age) and there had been a lack of procedural safeguards, the only safeguard provided by the Management of Police Information Code of Practice being that data would be held for a minimum of six years and then reviewed. The ECtHR did not consider that this was applied in a meaningful way as the decision to retain did not take account of the heightened level of protection it attracted as data revealing a political opinion. The ECtHR rejected the argument that it would be too burdensome to review and delete all entries on the database relating to the applicant; also, if this were accepted as a valid reason for non-compliance, that would create a route to allow violations of Article 8.

The police unit (National Domestic Extremism and Disorder Intelligence Unit) which held the standalone database containing the applicant's six data entries which were the subject of the judgment, has ceased to exist. The information held by this unit was transferred to the National Counter Terrorism Policing Operations Centre within the Metropolitan Police Service (MPS). A new national database (the National Common Intelligence Application (NCIA)) supports the work of this Centre. Other police forces migrated their respective standalone databases to the NCIA. Searches were then conducted by the Compliance & Protective Monitoring Unit across the migrated databases for any references to the applicant. Any remaining references to the applicant that were identified were deleted by 4 October 2019.

The NCIA is administered centrally by the National Counter Terrorism Police Headquarters within the MPS. As this data is now on one database and is under the control of one police force, this ensures a consistent approach to the review, retention and disposal of this information. A team of assessors determine whether a record is relevant and necessary and whether it is proportionate for the record to be added to the database, and their decisions are recorded. The NCIA database schedules a review for all records at either 6, 7 or 10 years depending on the category of the data. A user may also trigger a record for review at another date in time if considered necessary.

The police have set up a national level 'Records Management Working Group' led by the Metropolitan Police Service, the College of Policing and the National Police Chiefs Council (NPCC) and including a member from the Information Commissioner's Office, whose role is to uphold information rights in the public interest.

The Records Management Working Group is working on producing a revised Management of Police Information Code of Practice. This is a statutory Code which sets out procedures to be applied in respect of the collection and retention of information and to which the police must have regard when obtaining, managing and using information to carry out their duties.

There will be consultation on the Code of Practice with policing and other stakeholders, privacy rights groups, regulators and the public.

The Government has committed to inform the Committee of Ministers of progress on this work in January 2021.

Recent declarations of incompatibility

The domestic courts made one declaration of incompatibility under section 4 of the HRA during the period August 2019 – July 2020:

- Jackson and Others v Secretary of State for Work and Pensions
Article 14 read with Article 8
Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020

Details of this case are set out in Annex A, which summarises the outcome of all 43 declarations of incompatibility that have been made since the HRA came into force until the end of the reporting period.

Annex A: Declarations of incompatibility

As there is no official database of declarations of incompatibility, this annex provides a summary of all declarations and their outcome. References to Articles are to the Convention rights as set out in the HRA, unless stated otherwise.

Since the HRA came into force on 2 October 2000 until the end of July 2020, 43 declarations of incompatibility have been made. Of these:

- 9 have been overturned on appeal (and there is no scope for further appeal): see numbers 1, 3, 6, 10, 15, 20, 24, 25 and 31 below;
- 5 related to provisions that had already been amended by primary legislation at the time of the declaration: 13, 14, 21, 22 and 32;
- 8 have been addressed by Remedial Order: 2, 19, 26, 29, 35, 36, 37 and 38;
- 15 have been addressed by primary or secondary legislation (other than by Remedial Order): 4, 5, 7, 8, 9, 11, 12, 16, 17, 18, 27, 28, 33, 34 and 39;
- 1 has been addressed by various measures: 23;
- 1 has been overturned on appeal but there is scope for further appeal: 42;
- 2 the Government has proposed to address by Remedial Order: 41 and 43;
- 2 are under consideration: 30 and 40.

All declarations of incompatibility

Cases with updates in this year's report are indicated in **bold type**. Full details of the other cases can be found in Annex A of last year's report.²³

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)
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)
3. Wilson v First County Trust Ltd (no. 2)
(Court of Appeal; [2001] EWCA Civ 633; 2 May 2001)
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)
6. Matthews v Ministry of Defence
(Queen's Bench Division; [2002] EWHC 13 (QB); 22 January 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)
10. R (on the application of Uttley) v Secretary of State for the Home Department
(Administrative Court; [2003] EWHC 950 (Admin); 8 April 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)

²³ <https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2018-to-2019>

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)
15. R (on the application of MH) v Secretary of State for Health
(*Court of Appeal*; [2004] EWCA Civ 1609; 3 December 2004)
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 & 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)
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)
20. Re MB
(*Administrative Court*; [2006] EWHC 1000 (Admin); 12 April 2006)
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)
23. **Smith v Scott**
(**Registration Appeal Court (Scotland)**; [2007] CSIH 9; 24 January 2007)
24. Nasser 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)

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)
27. R (on the application of Royal College of Nursing and Others) v Secretary of State for Home Department
(Administrative Court; [2010] EWHC 2761 (Admin); 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)
29. **R (on the application of Reilly (no. 2) and Hewstone) v Secretary of State for Work and Pensions**
(Administrative Court; [2014] EWHC 2182 (Admin); 4 July 2014)
30. **Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya**
(Court of Appeal; [2015] EWCA Civ 33; 5 February 2015)
31. Northern Ireland Human Rights Commission, Re Judicial Review
(Queen's Bench Division (NI); [2015] NIQB 102; 16 December 2015)
32. David Miranda v Secretary of State for the Home Department
(Court of Appeal; [2016] EWCA Civ 6; 19 January 2016)
33. **R (on the application of P and A) v Secretary of State for the Home Department and Others**
(Administrative Court; [2016] EWHC 89 (Admin); 22 January 2016)
34. **R (on the application of G) v Constable of Surrey Police and Others**
(Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016)
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; claim number CO/1793/2017; 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**
(Court of Appeal; [2017] EWCA Civ 1916; 28 November 2017)

39. **Steinfeld and another v Secretary of State for International Development**
(Supreme Court; [2018] UKSC 32; 27 June 2018)
40. **K (A Child) v Secretary of State for the Home Department**
(Administrative Court; [2018] EWHC 1834 (Admin); 18 July 2018)
41. **Siobhan McLaughlin, Re Judicial Review (Northern Ireland)**
(Supreme Court; [2018] UKSC 48; 30 August 2018)
42. **R (on the application of the Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department**
(Administrative Court; [2019] EWHC 452 (Admin); 1 March 2019)
43. **Jackson and Others v Secretary of State for Work and Pensions**
(Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020)

Updates on declarations of incompatibility

23. *Smith v Scott*

Registration Appeal Court (Scotland); [2007] CSIH 9; 24 January 2007

This case concerned the incapacity of a convicted prisoner who was unable to register to vote at the Scottish Parliament elections in May 2003 under section 3 of the Representation of the People Act 1983.

The Court ruled that as part of the Court of Session for the purposes of section 4 of the HRA it had the power to make a declaration of incompatibility under that section. It held that the Scottish Parliament was a legislature for the purposes of section 3 of the Representation of the People Act 1983 and, therefore, declared that section 3 was incompatible with Article 3 of Protocol 1 on the grounds that it imposed a blanket ban on convicted prisoners voting in the Scottish Parliament elections. This declaration was substantially similar to the judgment of the ECtHR in the earlier case of *Hirst v the UK (no. 2)* (Application 24035/01; 6 October 2005).

On 16 October 2013, the UK Supreme Court handed down its judgment on a further legal challenge relating to prisoner voting rights in *Chester & McGeoch*.²⁴ The Court applied the principles in *Hirst (no. 2)* and *Scoppola v Italy (no. 3)* regarding the blanket ban on voting, but declined to make any further declaration of incompatibility. The Supreme Court took the view that the incompatibility of the blanket ban on prisoner voting in the UK with the ECHR was already the subject of a declaration of incompatibility made by the Registration Appeal Court in *Smith v Scott* and was under review by the UK Parliament and that, in those circumstances, there was no point in making a further declaration of incompatibility.

The UK Government considered this declaration alongside the ECtHR's decision in *Hirst* and its pilot judgment in *Greens and MT v UK*. In 2018, the UK Government adopted a package of administrative measures to respond to the violations found in *Hirst* and *Greens* and *MT*. After examination of those measures, the Committee of Ministers decided to close its supervision of the execution of the *Hirst* and *Greens and MT* group on 6 December 2018.

The Scotland Act 2016 and Wales Act 2017 devolved powers to Scottish and Welsh devolved legislatures respectively over local government elections and elections to the devolved legislatures. The Scottish and Welsh Governments both announced their intentions in late 2019 to change the law to allow some prisoners to vote in devolved elections.

The Scottish Elections (Franchise and Representation Bill) received Royal Assent in April 2020. The Bill has extended the right to vote in Scottish Parliament and local government

²⁴ R. (on the application of Chester) v Secretary of State for Justice; Supreme Court [2014] UKSC 25

elections for convicted prisoners sentenced to 12 months or less who would otherwise be resident in Scotland. The Welsh Government proposed to extend the right to vote in the National Assembly and Welsh local government elections to prisoners and children in custody aged 16-17 from Wales who have been sentenced up to four years or less in Welsh and English prisons via amendment to its Local Government and Elections (Wales) Bill. However in April the Local Government Minister announced that, due to constraints on the Welsh Government's legislative programme because of COVID they would not be committing any future resource to this amendment.

29. R (on the application of Reilly (no. 2) and Hewstone) v Secretary of State for Work and Pensions

Administrative Court; [2014] EWHC 2182 (Admin); 4 July 2014

The claimants sought a declaration of incompatibility on the ground that the Jobseekers (Back to Work Schemes) Act 2013 ('the 2013 Act') was incompatible with their rights under Article 6 and Article 1 of Protocol 1.

The 2013 Act retrospectively validates notifications and sanctions decisions made under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 ('the ESE Regulations'). The ESE Regulations were declared *ultra vires* in *R (on the application of Reilly and Wilson) v Secretary of State for Work and Pensions* [2013] EWCA Civ 66.

The High Court found the 2013 Act was incompatible with the claimants' rights under Article 6(1) and granted a declaration of incompatibility. However, it was decided that Article 1 of Protocol 1 was not engaged.

The Government appealed the judgment to the Court of Appeal and the claimants filed a counter-appeal. The Court joined this case with *Jeffrey and Bevan v Secretary of State for Work and Pensions* and upheld the declaration of incompatibility: [2016] EWCA Civ 413.

The Court of Appeal stated that it believed that the High Court was right to hold that the enactment of the 2013 Act gave rise to a breach of Article 6(1) in the case of Mr Hewstone, and that it also believed it gave rise to a breach 'in the cases of all other JSA [Jobseeker's Allowance] claimants who had filed appeals against sanctions imposed under the 2011 Regulations prior to its [the 2013 Act's] coming into force.'

The declaration of incompatibility affects a limited group of claimants: those who had lodged an appeal of a sanction decision that had been made under the ESE Regulations whose appeal had not been finally determined, abandoned or withdrawn by 26 March 2013 (the date the 2013 Act came into force).

The Government decided to address this incompatibility by amending the 2013 Act. A paper with a draft of a proposed Remedial Order to address the incompatibility was laid before Parliament on 28 June 2018. This would restore claimants' right to a fair hearing and give the Secretary of State for Work and Pensions the power to revise or supersede the sanction decision where the claimant had an appeal of a sanction decision (made under the ESE Regulations) still in the Tribunal system where the claimant had appealed a sanction decision (made under the ESE Regulations) by 26 March 2013 and that appeal had not been finally determined, abandoned or withdrawn by 26 March 2013.

The Joint Committee on Human Rights published its report on 31 October 2018, stating their view that the proposed draft Remedial Order adequately remedies the incompatibility and recommending that it be approved by Parliament.

The Government laid its response and a revised draft Remedial Order on 5 September 2019. The initial proposed draft Remedial Order restored the right to a fair hearing for ESE Regulation appeal cases because the appellants in the Court of Appeal case were appealing sanctions decisions made under these Regulations. Since then, an Upper Tribunal Judge questioned whether a limited group of Mandatory Work Activity (MWA) appeal cases might also be included, as their rights under Article 6(1) may arguably also have been affected by the 2013 Act.

The Government believed that certain MWA Regulation sanction appeal cases were in a similar position to the ESE sanction appeal cases that were specifically examined by the Court of Appeal. The Government therefore revised the draft Remedial Order to ensure that claimants who had a pending sanctions appeal under the ESE Regulations or under the MWA Regulations in the Tribunal system on 26 March 2013 who were affected when the retrospective provisions of the 2013 Act came into effect were included in the draft Remedial Order.

The JCHR published its report on 13 March 2020, noting that the draft Remedial Order adequately remedied the incompatibility and recommending that it be approved. Subsequently, the draft Remedial Order was debated and approved in both Houses of Parliament.

The Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2020 came into force on 3 October 2020. The department is currently working on finalising the operational process of implementing the order, and will be contacting the affected parties once this has been done.

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.

The Government is considering options for addressing the declaration of incompatibility.

33. R (on the application of P and A) v Secretary of State for the Home Department and Others

Administrative Court; [2016] EWHC 89 (Admin); 22 January 2016

&

34. R (on the application of G) v Constable of Surrey Police and Others

Administrative Court; [2016] EWHC 295 (Admin); 19 February 2016

These cases challenged the related schemes for criminal records disclosure under the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The schemes relate to an individual's obligation to self-disclose and the inclusion of criminal record information on certificates issued by the Disclosure and Barring Service (DBS) respectively. The cases were heard by the Supreme Court on appeal from the Court of Appeal which had previously held that there were insufficient safeguards contained within the schemes such that they were not 'in accordance with the law' and that the schemes were disproportionate as they failed to sufficiently distinguish convictions and cautions that are relevant to and necessary for the purpose for which they are disclosed. The Northern Ireland case of *Gallagher* was joined on appeal for the Supreme Court hearing.

The Supreme Court disagreed with the lower courts in respect of its approach to the legality test and found the schemes to be 'in accordance with the law' for the purpose of Article 8. It did however dismiss the Government's appeal, finding the schemes to be disproportionate in two respects and affirmed the lower courts' declarations of incompatibility with Article 8 in relation to (i) the requirement under the schemes to disclose all convictions where the individual has more than one conviction and (ii) the inclusion of reprimands and warnings issued to under 18s within the schemes: [2019] UKSC 3.

To address this, the Government amended the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 through secondary legislation. The amending Orders, which were approved by Parliament, and which came into force on 28 November 2020, removed from automatic disclosure on certificates those offences resulting in a youth caution, reprimand or warning. Changes made by the Orders also have the effect that, where a person has more than one conviction, it no longer means that all of their convictions will be automatically disclosed on criminal records certificates. The changes also mean that a person will no longer have to disclose these offences if asked about them, unless required to do so under other rules.

38. Smith v (1) Lancashire Teaching Hospitals NHS Foundation Trust; (2) Lancashire Care NHS Foundation Trust; (3) Secretary of State for Justice

Court of Appeal; [2017] EWCA Civ 1916; 28 November 2017

The substantive claim in this case related to the death of Ms Smith's cohabiting partner as a result of clinical negligence. Liability was admitted by the first and second defendants and the substantive claim was settled. A declaration of incompatibility was sought in relation to the provisions in section 1A of the Fatal Accidents Act 1976 which govern the award of bereavement damages in England and Wales. The bereavement damages award is set by Order of the Lord Chancellor, and was at that point only available to the wife, husband or civil partner of the deceased; and where the deceased was a minor who was never married or had a civil partner, to his or her parents, if he or she was legitimate; or to his or her mother, if illegitimate.

The Court of Appeal held that the provisions of section 1A(2)(a) of the 1976 Act were incompatible with Article 14 read with Article 8 because they denied the award of bereavement damages to a person who was living with the deceased in the same household as an unmarried partner for at least two years prior to the death.

A paper with a draft of a proposed Remedial Order to address the incompatibility was laid before Parliament on 8 May 2019, and was reported on by the Joint Committee on Human Rights on 16 July 2019. Following consideration of the Joint Committee's recommendations, a draft Remedial Order was laid before Parliament on 12 February

2020. A further report by the Joint Committee was published on 18 May, and following debates in the House of Commons on 15 June and the House of Lords on 3 September, the Remedial Order was formally approved by Parliament on 8 September. The Order was then made on 15 September, and came into effect on 6 October 2020.

The Order amends section 1A of the 1976 Act to make bereavement damages available to claimants who cohabited with the deceased person for a period of at least two years immediately prior to the death. The proposed amendment also provides that in instances where both a qualifying cohabitant and a spouse is eligible (i.e. where the deceased was still married and not yet divorced or separated but had been in a new cohabiting relationship for at least two years) the award should be divided equally between the eligible claimants. The provisions apply to causes of action which accrue on or after 6 October 2020.

39. R (on the application of Steinfeld and Keidan) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary)

Supreme Court; [2018] UKSC 32; 27 June 2018

Civil partnerships were introduced through the Civil Partnership Act 2004 (CPA) in order to enable same-sex couples to formalise their relationships at a time when marriage was not available to them. Same-sex marriage was subsequently introduced through the Marriage (Same-Sex Couples) Act 2013. Following this, civil partnerships remained available only to same-sex couples.

The appellants, a committed opposite-sex couple ideologically opposed to marriage, claimed that the fact that they were prohibited from entering a civil partnership breached their rights under Article 14 taken with Article 8. The Secretary of State accepted that enactment of the Marriage (Same-Sex Couples Act) 2013 brought about an inequality of treatment which engaged Article 14, when taken together with Article 8, but argued that this could be addressed by either extending the right to form a civil partnership to opposite-sex couples or by abolishing or phasing out civil partnerships. The ongoing difference in treatment was therefore justified by the need to take time to decide how best to eliminate it.

The Court found that taking time to evaluate whether to abolish or extend civil partnerships did not constitute a legitimate aim as there is an insufficient connection between that aim and the discriminatory treatment, which the Secretary of State is required to justify. The Secretary of State had also failed to show that a fair balance had been struck between the interests of the appellants and those of the community. Accordingly, the Court made a declaration that sections 1 and 3 of the Civil Partnership Act 2004, to the extent that they preclude a different-sex couple from entering into a civil partnership, are incompatible with Article 14 taken with Article 8.

On 2 October 2018, the then Prime Minister announced that the Government would extend civil partnerships to opposite-sex couples.

The Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 received Royal Assent on 26 March 2019. Section 2 of the Act enables the Secretary of State to make regulations to amend the Civil Partnership Act 2004 so that two people who are not of the same sex are eligible to form a civil partnership in England and Wales. It requires the Secretary of State to make the regulations so as to come into force no later than 31 December 2019.

The Government set out its proposals for implementing opposite-sex civil partnerships in England and Wales in the document *Implementing Opposite-Sex Civil Partnerships: Next Steps*, published on 10 July 2019. The relevant regulations were laid in Parliament on 21 October 2019.

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” relates to a child who is 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.

The Government is considering appropriate legislative options to address the issue raised in this case. In the meantime, we have amended fee regulations to remove the requirement for a fee to be paid for registration applications from this group.

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.

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 extend eligibility for WPA to cohabittees with children.

42. R (on the application of the Joint Council for the Welfare of Immigrants) v Secretary of State for the Home Department

Administrative Court; [2019] EWHC 452 (Admin); 1 March 2019

Court of Appeal; [2020] EWCA 542 (Civ); 21 April 2020

The case concerned the Right to Rent Scheme (the Scheme) which requires landlords and agents and homeowners to check the immigration status of tenants and other occupiers to, before entering in to a tenancy agreement. These checks apply equally to everyone seeking to rent property and there are penalties for landlords who fail to complete them and who are later found to have rented to someone without a right to be in the UK.

The challenge was brought on the basis that the Scheme allegedly causes landlords to commit nationality and/or race discrimination against those who are entitled to rent with the unintended effect that non-white British citizens are less likely to be able to find homes.

The High Court made an Order declaring that sections 20–37 of the Immigration Act 2014 are incompatible with Article 14 in conjunction with Article 8. It also made an Order declaring that rolling out the scheme from England to Wales, Scotland or Northern Ireland without further evaluation would be irrational and a breach of section 149 of the Equality Act 2010.

The Court of Appeal, overturning the decision of the High Court, determined that the Scheme is lawful and does not breach human rights law. The legislation was found to have a legitimate policy purpose, with the Court stating that it is in the public interest that a coherent immigration policy should set out the criteria on which leave to enter and remain is granted, and also discourage unlawful entry or the continued presence of those who have no right to enter or be here.

The Joint Council for the Welfare of Immigrants is seeking permission from the Supreme Court to appeal the ruling.

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 take forward a Remedial Order to extend eligibility to BSP to cohabitants with children.

Annex B: Statistical information on implementation of ECtHR judgments

Data in tables 1 and 2 are taken from the Annual Report 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: UK Performance

| New cases (B.3) | 2017 | 2018 | 2019 |
|---|-------------|-------------|-----------------|
| UK cases | 5 | 2 | 7 |
| of which leading cases | 1 | 0 | 4 |
| Cases closed by final resolution (D.3) | 2017 | 2018 | 2019 |
| UK cases | 8 | 8 | 3 |
| of which leading cases | 6 | 2 | 1 |
| Pending cases at year end (C.3) | 2017 | 2018 | 2019 |
| UK cases | 18 | 12 | 16 |
| of which leading cases | 7 | 5 | 8 ²⁵ |
| Leading cases by time pending (F.1) | 2017 | 2018 | 2019 |
| Pending <2 years | 1 | 0 | 3 |
| Pending 2–5 years | 1 | 1 | 1 |
| Pending >5 years | 5 | 4 | 3 |
| Payment of just satisfaction (G.2) | 2017 | 2018 | 2019 |
| Paid within deadline | 5 | 2 | 4 |
| Paid late | 1 | 1 | 0 |
| Awaiting confirmation of payment | 2 | 1 | 2 |
| Just satisfaction (G.1) | 2017 | 2018 | 2019 |
| Total amount paid by the UK (€) | 222,677 | 6,120 | 74,883 |

²⁵ This is greater than the sum of the three figures below as it includes one case which was closed shortly before the end of 2019.

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

| Ranking by 2019 pending cases | State | All pending cases | | | of which leading cases | | |
|--|------------------------|-------------------|-------|--------------|------------------------|------|------|
| | | 2017 | 2018 | 2019 | 2017 | 2018 | 2019 |
| 1 | Russian Federation | 1,689 | 1,585 | 1,663 | 216 | 215 | 219 |
| 2 | Turkey | 1,446 | 1,237 | 689 | 177 | 166 | 155 |
| 3 | Ukraine | 1,156 | 923 | 591 | 136 | 127 | 119 |
| 4 | Romania | 553 | 309 | 284 | 58 | 64 | 76 |
| 5 | Hungary | 205 | 252 | 266 | 54 | 51 | 48 |
| 6 | Italy | 389 | 245 | 198 | 54 | 57 | 56 |
| 7 | Greece | 305 | 238 | 195 | 55 | 49 | 43 |
| 8 | Azerbaijan | 197 | 186 | 189 | 54 | 55 | 34 |
| 9 | Republic of Moldova | 271 | 173 | 173 | 76 | 55 | 53 |
| 10 | Bulgaria | 207 | 208 | 170 | 77 | 90 | 79 |
| 11 | Poland | 126 | 100 | 98 | 31 | 32 | 30 |
| 12 | Croatia | 185 | 91 | 84 | 63 | 46 | 37 |
| 13 | Serbia | 148 | 60 | 57 | 19 | 13 | 13 |
| 14 | Georgia | 36 | 41 | 47 | 13 | 17 | 19 |
| 15 | Lithuania | 30 | 41 | 42 | 21 | 21 | 21 |
| 16 | Bosnia and Herzegovina | 30 | 24 | 39 | 11 | 10 | 10 |
| 17 | Armenia | 30 | 36 | 38 | 11 | 15 | 19 |
| 18= | Albania | 48 | 37 | 36 | 9 | 9 | 11 |
| | France | 34 | 32 | 36 | 16 | 17 | 19 |
| 20 | North Macedonia | 52 | 52 | 35 | 25 | 20 | 14 |
| 21 | Portugal | 38 | 34 | 33 | 14 | 17 | 17 |
| 22 | Slovak Republic | 63 | 36 | 32 | 9 | 8 | 12 |
| 23 | Malta | 13 | 23 | 31 | 8 | 14 | 13 |
| 24 | Belgium | 39 | 21 | 30 | 13 | 14 | 18 |
| 25 | Finland | 42 | 29 | 29 | 13 | 9 | 9 |
| 26 | Spain | 31 | 20 | 24 | 19 | 14 | 16 |
| 27 | Germany | 18 | 18 | 20 | 16 | 16 | 14 |
| 28 | Austria | 32 | 19 | 17 | 15 | 10 | 6 |
| 29 | United Kingdom | 18 | 12 | 16 | 7 | 5 | 8 |
| 30 | Slovenia | 50 | 13 | 13 | 20 | 11 | 12 |

| Ranking by 2019 pending cases | State | All pending cases | | | of which leading cases | | |
|--|----------------|-------------------|--------------|--------------|------------------------|--------------|--------------|
| | | 2017 | 2018 | 2019 | 2017 | 2018 | 2019 |
| 31= | Cyprus | 8 | 9 | 8 | 4 | 8 | 7 |
| | Latvia | 33 | 7 | 8 | 25 | 5 | 6 |
| | Switzerland | 9 | 8 | 8 | 7 | 8 | 7 |
| 34= | Iceland | 4 | 3 | 6 | 2 | 3 | 3 |
| | Netherlands | 12 | 7 | 6 | 10 | 4 | 5 |
| 36 | Montenegro | 14 | 4 | 4 | 3 | 3 | 3 |
| 37= | Czech Republic | 7 | 7 | 3 | 7 | 4 | 2 |
| | Sweden | 2 | 3 | 3 | 2 | 3 | 3 |
| 39= | Estonia | 2 | 1 | 2 | 2 | 1 | 2 |
| | Ireland | 7 | 3 | 2 | 3 | 3 | 2 |
| | Liechtenstein | 2 | 2 | 2 | 1 | 1 | 1 |
| | Norway | 0 | 1 | 2 | 0 | 1 | 2 |
| 43= | Denmark | 1 | 0 | 1 | 1 | 0 | 1 |
| | Luxembourg | 0 | 1 | 1 | 0 | 1 | 1 |
| 45= | Andorra | 0 | 0 | 0 | 0 | 0 | 0 |
| | Monaco | 1 | 0 | 0 | 1 | 0 | 0 |
| | San Marino | 1 | 0 | 0 | 1 | 0 | 0 |
| | Total | 7,584 | 6,151 | 5,231 | 1,379 | 1,292 | 1,245 |

Table 3: Judgments finding a violation against the UK under the supervision of the Committee of Ministers at the end of July 2020

| Case name | Application | Final judgment |
|---|-----------------------|----------------|
| Enhanced Procedure | | |
| <i>McKerr group</i> | | |
| McKerr | 28883/95 | 04/08/2001 |
| Jordan | 24746/94 | 04/08/2001 |
| Kelly and Others | 30054/96 | 04/08/2001 |
| Shanaghan | 37715/97 | 04/08/2001 |
| McShane | 43290/98 | 28/08/2002 |
| Finucane | 29178/95 | 01/10/2003 |
| Collette and Michael Hemsworth | 58559/09 | 16/10/2013 |
| McCaughey and Others | 43098/09 | 16/10/2013 |
| Gaughran (<i>enhanced from 1/10/2020</i>) | 45245/15 | 13/06/2020 |
| Standard Procedure | | |
| S and Marper | 30562/04 and 30566/04 | 04/12/2008 |
| Hammerton | 6287/10 | 12/09/2016 |
| Catt | 43514/15 | 24/04/2019 |
| JD and A | 32949/17 and 34614/17 | 24/02/2020 |

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