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 2023–2024

November 2024

CP 1192

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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of His Majesty

November 2024

CP 1192

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# Contents

# 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 from August 2023 to July 2024 (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 the Council of Europe's statutory decision-making body, in which every member State 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] https://hudoc.echr.coe.int

[3] https://www.echr.coe.int/home

The Department for the Execution of Judgments has a website explaining the process of implementation[4] 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 court[7] is satisfied that legislation[8] is incompatible with a Convention right, it may make a declaration of incompatibility under section 4 of the HRA. This declaration constitutes 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 of Justice

4 https://www.coe.int/en/web/execution

5 https://hudoc.echr.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.

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

This Government is fully committed to the protection of human rights both at home and abroad. We are committed to the international human rights framework and the important role that multilateral organisations like the Council of Europe play in upholding it.

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 Europe. The Government is unequivocally committed to the ECHR. The Government likewise considers the HRA an important part of our constitution and fundamental to human rights protections in the UK.

## ECHR and wider Council of Europe work

### Execution Coordinators Network

The UK's national coordinator for the implementation of judgments, a Ministry of Justice official, took part in the launch of the Execution Coordinators Network in Helsinki on 24 June 2024. The Network brings together all the national coordinators of Council of Europe member States, to exchange good practice and experience through an online portal and at annual meetings, to further the Council of Europe's commitment to ensuring full, effective and prompt implementation of judgments. The national coordinators held their first annual meeting with the Department for the Execution of Judgments on the same day.

These initiatives were set up by the Council of Europe's multilateral project, 'Support to efficient domestic capacity for the execution of ECtHR judgments'[10] to fulfil the undertakings, most recently announced in the 2023 Reykjavík Declaration, to assist member States in the implementation of judgments through increased synergy and cooperation programmes.

### Artificial intelligence

On 5 September 2024, the UK was amongst the first signatories – alongside the European Union (EU) and eight non-EU states, including the United States – to sign the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law.[11] The Convention is the first legally binding global treaty governing the safe

[10] https://www.coe.int/en/web/implementation/support-to-efficient-domestic-capacity-for-the-execution-of-ecthr-judgments-phase-1-

[11] Details can be found at https://www.coe.int/en/web/artificial-intelligence/the-framework-convention-on-artificial-intelligence

use of artificial intelligence (AI), and aims to ensure that activities within the lifecycle of AI systems are fully consistent with human rights, democracy, and the rule of law.

The new framework has three over-arching safeguards:

- protecting human rights, including ensuring people's data is used appropriately, their privacy is respected and AI does not discriminate against them;
- protecting democracy, by ensuring countries take steps to prevent public institutions and processes being undermined; and
- protecting the rule of law, by putting the onus on signatory countries to regulate AI-specific risk, protect their citizens from potential harms and ensure its safe use.

Once the treaty is ratified and brought into effect in the UK, existing laws and measures to safeguard human rights from the risks of AI will be enhanced.

## Reporting to United Nations (UN) human rights monitoring bodies

The Government takes its international human rights obligations seriously and is committed to playing a full role in UN treaty 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 Government is also fully committed to the Universal Periodic Review process,[12] 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 Government is committed to constructive engagement with the UK's National Human Rights Institutions and interested non-governmental organisations.

Since August 2023, the UK's reporting on its UN human rights obligations has included the following events:

- In March 2024, the UK participated in an interactive dialogue with the Human Rights Committee under the International Covenant on Civil and Political Rights.
- In March 2024, the Committee on the Rights of Persons with Disabilities held a follow-up dialogue on the UK's inquiry report.
- In August 2024 the UK participated in an interactive dialogue with the Committee on the Elimination of Racial Discrimination.

[12] Details can be found at https://www.ohchr.org/en/hr-bodies/upr/upr-home

- In August 2024 the UK submitted to the Committee on Economic, Social and Cultural Rights a response to the Committee's list of issues ahead of an interactive dialogue next year.

# The UK at the ECtHR: statistics

The ECtHR publishes statistical reports for each calendar year.[13] The following tables summarise data on the applications made against the UK at the ECtHR from its initial establishment in 1959 until the end of 2023, focusing on the last ten years.

### New applications

Applications have been on a general downward trend over the last ten years. By population, the UK has the lowest rate of applications of all member States: in 2023 it was 3.0 per million, while for all States combined it was 47.4 per million.[14]

**Table 1. Applications against the UK allocated to a judicial formation[15]**

| 1959–2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 22,116 | 720 | 575 | 372 | 415 | 354 | 344 | 301 | 210 | 240 | 201 | **25,848** |

### Inadmissible applications

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 number declared inadmissible in the last nine years is close to the number allocated, indicating that only a small minority of allocated applications are found admissible and proceed to a judgment.

**Table 2. Applications against the UK declared inadmissible or struck out[16]**

| 1959–2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 18,737 | 1,970 | 533 | 360 | 507 | 358 | 347 | 280 | 206 | 255 | 172 | **23,725** |

[13] https://www.echr.coe.int/statistical-reports; see also https://www.echr.coe.int/dashboards

[14] Source: Analysis of statistics 2023, page 15. Russia ceased to be a member of the Council of Europe on 16 March 2022, but applications against Russia were still being allocated to the Court in 2023. The rate of applications for all States including Russia was 41.3 per million.

[15] Source: Analysis of statistics 2023, page 15, 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.

[16] Source: Analysis of statistics 2023, page 14, and previous reports. A few applications each year are struck out on the basis of a friendly settlement or unilateral declaration.

### Judgments

The numbers of judgments and adverse judgments remain low.

**Table 3. Judgments in UK cases (judgments finding violations)[17]**

| 1959–2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 499 | 14 | 13 | 14 | 5 | 2 | 5 | 4 | 7 | 4 | 3 | **570** |
| (297) | (4) | (4) | (7) | (2) | (1) | (5) | (2) | (5) | (2) | (1) | **(330)** |

### Caseload

The caseload of ongoing applications against the UK under consideration by the ECtHR has followed a downward trend over the last ten years. It remains low both in absolute terms and as a proportion of all States' applications. For comparison, the UK population comprises 8.1% of the population of all States (including Russia).[18]

**Table 4. Ongoing caseload of the ECtHR at year end[19]**

| Year | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|---|---|---|---|
| **UK** | 1,243 | 256 | 231 | 130 | 124 | 111 | 124 | 118 | 99 | 127 |
| **Total** | 69,924 | 64,834 | 79,750 | 56,262 | 56,365 | 59,813 | 62,000 | 70,156 | 74,647 | 68,468 |
| **Proportion** | 1.78% | 0.39% | 0.29% | 0.23% | 0.22% | 0.19% | 0.20% | 0.17% | 0.13% | 0.19% |

### Implementation

At the end of 2023, the UK was responsible for 12 (0.31%) of a total 3,819 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 size (see Annex B).[20]

Further statistics and the numbers of pending judgments for all States for the years 2021–2023 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 2024.

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17 Source: Violations by Article and by State 2023 and previous reports; Violations by Article and by State 1959–2022 (not produced for 2023) and previous reports. This refers to judgments when given, not final judgments, and includes strike-out judgments following a friendly settlement. A judgment can cover more than one application.

18 Source: Analysis of statistics 2023, page 15.

19 Source: Analysis of statistics 2023, page 13, and previous reports.

20 Source: Supervision of the execution of judgments and decisions of the European Court of Human Rights: 17th Annual Report of the Committee of Ministers 2023, Table C.4. These statistics now exclude Russia. See https://www.coe.int/en/web/execution/annual-reports

# Earlier ECtHR judgments

The reporting year began with 13 judgments under the supervision of the Committee of Ministers.

During the year, having examined the action reports submitted by the Government, the Committee of Ministers was satisfied that all necessary measures had been adopted and decided to close its examination of the following judgments:

- Two judgments of the *McKerr* group: *Shanaghan* (37715/97), final judgment on 4 August 2001, and *McCaughey and Others* (43098/09), final judgment on 16 October 2013, both closed on 21 September 2023. The Committee of Ministers recalled that the question of general measures continues to be examined within the framework of the *McKerr* group.
- *Benkharbouche and Janah* (19059/18 and 19725/18), final judgment on 5 September 2022, closed on 13 December 2023.

Details of these judgments can be found in last year's report.[21]

The following judgments remained under supervision at the end of July 2024:

- Three judgments of the *McKerr* group (28883/95 etc.), first final judgments on 4 August 2001
- *S and Marper* (30562/04 and 30566/04), final judgment on 4 December 2008
- *Catt* (43514/15), final judgment on 24 April 2019
- *Gaughran* (45245/15), final judgment on 13 June 2020
- *Big Brother Watch and Others* (58170/13 etc.), final judgment on 25 May 2021
- *VCL and AN* (77587/12 and 74603/12), final judgment on 5 July 2021
- *SW* (87/18), final judgment on 22 September 2021
- *Coventry* (6016/16), final judgment on 6 March 2023.

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

[21] https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2022-to-2023

# 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 (now closed) also concerned a failure by the State to comply with its obligations under Article 34.

In *McCaughey and Others* and *Hemsworth* (both now closed) 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.

**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.

In June 2024, the Committee of Ministers adopted its latest decisions on the *McKerr* group. As regards general measures, the Committee reiterated its concerns about the approach taken in the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. The Committee will consider the group again in 2025.

**The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023**

The previous UK Government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill (now Act) in May 2022. The legislation obtained Royal Assent on 18 September 2023. It stopped Troubles-related criminal investigations, new civil proceedings, and legacy inquests and, in their place, created a new independent body – the Independent Commission for Reconciliation and Information Recovery (ICRIR), with the primary objective of providing information to families, and victims and survivors. The ICRIR's operational functions were commenced on 1 May 2024. The Act also made provision to grant immunity from prosecution to individuals who cooperated with the ICRIR, though these functions have not been commenced (see below).

The legislation was opposed by the Irish Government, the Northern Ireland political parties, and many victims and survivors of the Troubles, and became subject to domestic and international legal challenges. In January 2024, the Irish Government lodged an inter-State case against the UK at the ECtHR. In February 2024, the Northern Ireland High Court made declarations of incompatibility in relation to a number of provisions included in the Act, including the immunity provisions (see details on page 40). The High Court also found the ICRIR to be independent and capable of conducting human rights compliant

investigations. The High Court judgment was subject to appeal to the Northern Ireland Court of Appeal by the previous Government, and to cross-appeal by the applicants.

Following the UK General Election on 4 July, this Government has committed to repeal and replace the Act, in particular, those provisions which have been most vehemently opposed by victims and survivors and found deficient by the court, such as the conditional immunity provisions.

On 29 July the Secretary of State for Northern Ireland laid a Written Ministerial Statement in Parliament to provide an update regarding the Government's approach to the Act.[22] In summary, it set out that the UK Government had formally abandoned all its grounds of appeal against the declarations of incompatibility made by the Northern Ireland High Court in relation to the Act. This included the provisions relating to conditional immunity. The Government asked the Court to continue with its consideration of the interpretation and effect of Article 2(1) of the Windsor Framework, while the applicants continued to pursue their cross-appeal.

The Written Ministerial Statement also affirmed the Government's commitment to reverse the current prohibition on bringing new civil proceedings, and to propose measures to allow inquests previously halted to proceed.

On 20 September, the Court of Appeal handed down its judgment.[23] In summary, the Court of Appeal recognised the wide powers, unfettered access to information, and structural independence of the ICRIR. However, the Court also found that "issues arise in relation to effective next of kin participation and the role of the SOSNI [Secretary of State for Northern Ireland] in relation to disclosure in cases where, previously, an inquest would have been required to discharge the state's article 2 obligations." The Government is now carefully considering this judgment, and laid a further Written Ministerial Statement in Parliament on 7 October providing an initial response.[24]

The Government has confirmed its intention to retain and reform the ICRIR, including by considering measures to further strengthen its independence and its powers. The ICRIR will need to strengthen public confidence in its work if it is to successfully deliver justice, accountability, and information to victims and survivors of the Troubles. Under the leadership of Sir Declan Morgan as Chief Commissioner, the Government has confidence in its ability to do so.

The Government has begun preparations to remedy the declarations of incompatibility made by the Northern Ireland High Court via a Remedial Order. In light of the Court of

22 https://questions-statements.parliament.uk/written-statements/detail/2024-07-29/hcws30

23 https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-dillon-and-others-ni-troubles-legacy-and-reconciliation-0

24 https://questions-statements.parliament.uk/written-statements/detail/2024-10-07/hcws108

Appeal judgment of 20 September, the Government is considering carefully the possibility of further provisions within the Remedial Order to address the findings of the Courts.

The Government is also undertaking a period of consultation with all interested parties, including victims and survivors, to seek their views on a practical way forward that complies with our human rights obligations and can obtain a measure of support across communities in Northern Ireland.

**Individual measures**

*McKerr*

This case was one of the inquests included in the then Lord Chief Justice of Northern Ireland's plan for disposing of remaining legacy inquests relating to the Troubles. A significant amount of disclosure to the Coroner took place in this case before it was prohibited from continuation after 1 May 2024 due to the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. While the case is eligible for referral to the ICRIR, the Government has committed to propose measures to allow inquests previously halted by the Act to proceed.

*Kelly and Others*

An inquest was held in 1995 following the incident in 1987. The Police Service of Northern Ireland's Historical Enquiries Team commenced an investigation in 2011.

Following an announcement by the Advocate General, in September 2015, that new inquests into these deaths are justified, the case became part of the Lord Chief Justice's plan to resolve legacy inquests. Like *McKerr*, this case is part of the cohort of inquests that was prohibited from continuation after 1 May 2024 due to the provisions of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 to date. While the case is eligible for referral to the ICRIR, the Government has committed to propose measures to allow inquests previously halted by the Act to proceed.

*Finucane*

On 27 February 2019, the Supreme Court handed down judgment in the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland).[25] In respect of the issues regarding Article 2 and the application of the HRA, the Supreme Court found that:

> "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 Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of

[25] https://www.supremecourt.uk/cases/uksc-2017-0058.html

> article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement." (para. 153)

Following the Supreme Court judgment, the previous Government undertook a review of previous investigations into the murder of Mr Finucane to inform the then Secretary of State for Northern Ireland's decision on what further steps may be necessary to meet the procedural requirements of Article 2. The then Secretary of State decided, in November 2020, that it was not appropriate for a public inquiry to be held at that time.

Mrs Finucane subsequently challenged this decision by way of Judicial Review. In December 2022, the Northern Ireland High Court held that there had still not been an Article 2 compliant inquiry into the death of Patrick Finucane. In February 2023, the Secretary of State for Northern Ireland appealed the Northern Ireland High Court judgment.

On 11 July 2024 the Court of Appeal ruled that there has still not been an Article 2 compliant investigation into the death of Mr Finucane, and set a timetable for government decision-making in the case. On 25 July, the Secretary of State met Mrs Finucane to hear her views on the circumstances surrounding the case, and on next steps.

On 11 September, the Secretary of State confirmed that an independent inquiry under the Inquiries Act 2005 will be established into the death of Patrick Finucane. The Government will now seek to appoint an Inquiry Chair and establish the inquiry's Terms of Reference as soon as possible. It is the Government's expectation that the inquiry will, while doing everything that is required to discharge the state's human rights obligations, avoid unnecessary costs, given all the previous reviews and investigations and the large amount of information and material that is already in the public domain. This approach is supported by the most recent High Court judgment, in which the judge suggested that an inquiry could "build on the significant investigative foundations which are already in place".

## 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 (as the then final appellate court). 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, which was noted by the ECtHR to be consistent with Recommendation No. R(92)1 of the Committee of Ministers, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases.

The Government 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).

It is now the intention of the DoJ to bring in new legislation to repeal those provisions and implement the wider destruction regime for Northern Ireland to ensure compliance with both *S and Marper* and *Gaughran* (covered later in this section of the report). The proposed new legislation will remove references to indefinite retention and instead set out maximum retention periods based on the nature and seriousness of the offence, the age of the person concerned, criminal history and whether the person is convicted or not convicted.

On 18 July 2024, the Northern Ireland Executive agreed to the introduction of the Justice Bill to the Northern Ireland Assembly, and it was introduced on 17 September 2024.[26]

It is likely to take approximately 12 months for the Bill to pass Assembly scrutiny and receive Royal Assent. It will then take approximately 18-24 months before the legislation can be commenced as there will be a range of subordinate legislation required to support the primary legislation. The Police Service of Northern Ireland will also need sufficient time to develop and test their systems to ensure that they are ready for commencement.

*Legacy biometric retention*
As the provisions of both PoFA and the new biometric retention framework to be introduced by DoJ will 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 mitigated this risk by introducing statutory provision through secondary legislation made under the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 to allow for the retention of designated biometric material solely for the purposes of such investigations. This secondary legislation (The Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024) came into force on 1 May 2024.

These regulations preserve biometric material which may be of relevance to ICRIR in its investigations that would otherwise be at risk of destruction under certain statutory destruction provisions. In practice, this will mean that biometric material collected under certain policing and terrorism powers will be protected from the statutory destruction regime. The retention of this data will be strictly time-limited for the period any such investigations are taking place.

In relation to biometric material taken in Northern Ireland, the regulations designate any biometric material taken in Northern Ireland before 31 October 2013 as a designated collection. Any material in this collection which would otherwise be subject to the destruction provisions is retained under the regulations.

The regulations also designate biometric material taken in England and Wales or in Scotland from individuals who were arrested or convicted between 1 January 1966 and 10 April 1998 of an offence under any of the following Acts:

- the Prevention of Terrorism (Temporary Provisions) Act 1974;
- the Prevention of Terrorism (Temporary Provisions) Act 1976;
- the Prevention of Terrorism (Temporary Provisions) Act 1984;
- the Prevention of Terrorism (Temporary Provisions) Act 1989; and

[26] https://www.niassembly.gov.uk/assembly-business/legislation/2022-2027-mandate/primary-legislation-bills-22-27-mandate/justice-bill/

- the Explosive Substances Act 1883.

Any retained data is subject to regular, periodic review by the ICRIR, and must be deleted at the end of its lifespan. The regulations brought forward propose no indefinite retention of biometric material, and the material retained is for the strict purpose of ICRIR investigations (to aid it in conducting Article 2 compliant investigations into Troubles-related deaths and serious injuries).

There was previously 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 implementation of the statutory provisions in the 1 May regulations. This transitional order expired on 31 October 2024.

# 3. Catt (43514/15)

**Chamber (First Section) – violation of Article 8**
**Final judgment on 24 April 2019**

The applicant was a pacifist, born in 1925, 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 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.

*Individual measures*
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.

*General measures*
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 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 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 produced 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. The new Code of Practice was laid in Parliament and published by the College of Policing on 20 July 2023, along with the complementary Authorised Professional Practice.

The Government provided a full update to the Committee of Ministers in March 2024, and intends to provide another update shortly, having met the Department for the Execution of Judgments in October 2024 to discuss its feedback on the previous update.

# 4. 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, meaning he was 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 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 of convicted persons 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 Evidence Act 1984 (PACE) as amended by the Protections of Freedoms Act 2012. The regime allows DNA and fingerprints of convicted persons to be retained indefinitely (subject to the type of the offence and the age of the individual).

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 (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.

Although indefinite retention of biometrics without the possibility of review violated Article 8, that has now been addressed UK-wide by the DPA and the wider data protection framework, which provides safeguards and provisions for individuals to apply for the deletion of their DNA and fingerprints. The framework includes independent oversight of data protection by the Information Commissioner's Office, which accepts complaints from members of the public who are unhappy with how an organisation has handled their information.

Moreover, ACRO Criminal Records Office is responsible for considering applications to delete criminal records earlier than is specified by the law. Decisions are made on the basis of published guidance, which sets clear parameters for granting applications. This

includes records which are indefinitely held because of an out of court disposal, i.e. cautions.

Notwithstanding the existing data protection and records management framework, the Home Office is also engaging with the Forensic Information Databases (FIND) Strategy Board to understand how, in the short to medium term, an exceptional case process could be implemented whereby individuals could ask the police to review and potentially to delete their biometric data following a conviction. This would provide an additional mechanism for an individual to request a review of their retained material, even where their material falls to be retained indefinitely under PACE.

Additionally, a long-standing review is ongoing of retention and deletion policies on the police's national computer system, as well as a separate review into custody image retention and deletion. The Home Office awaits the conclusion of these reviews and is considering whether further work is necessary in England and Wales to comply with the judgment and sustain this into the long term.

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.

*Northern Ireland*
The Northern Ireland authorities plan to take forward biometrics provisions in relation to DNA and fingerprints to amend provisions within the Police and Criminal Evidence (Northern Ireland) Order 1989 to enable the commencement of a biometric retention framework in Northern Ireland that will comply with the *S and Marper* and *Gaughran* judgments. The Department of Justice in Northern Ireland held a public consultation in 2020 on a new legislative framework to change devolved legislation on biometrics retention in Northern Ireland, to replace indefinite retention with maximum retention periods, based on the nature and seriousness of the offence, the age of the person concerned, criminal history, and whether the person is convicted or not convicted.

The legislation will also support the DPA by setting out in regulations a requirement to review long-term retained biometric material. The proposed retention periods will be maximum retention periods and the review mechanism will provide an appropriate safeguard ensuring that long-term retained material is subject to a scheduled review to assess the continuing need to retain biometric material. An individual will also be able to apply at any stage for a review of the continued need to retain their biometric material.

The proposals also contain provision for the appointment and functions of the Northern Ireland Commissioner for the Retention of Biometric Material, which will provide important independent oversight of the operation of the new retention system and the review

process. This may also include an independent complaint role following a decision by the PSNI to continue to retain long-term retained material.

On 18 July 2024, the Northern Ireland Executive agreed to the introduction of the Justice Bill to the Northern Ireland Assembly, and it was introduced on 17 September 2024.[27]

It is likely to take approximately 12 months for the Bill to pass Assembly scrutiny and receive Royal Assent. It will then take approximately 18-24 months before the legislation can be commenced as there will be a range of subordinate legislation required to support the primary legislation. The Police Service of Northern Ireland will also need sufficient time to develop and test their systems to ensure that they are ready for commencement.

[27] https://www.niassembly.gov.uk/assembly-business/legislation/2022-2027-mandate/primary-legislation-bills-22-27-mandate/justice-bill/

# 5. Big Brother Watch and Others (58170/13, 62322/14, 24960/15)

**Grand Chamber – violation of Articles 8 and 10**
**Final judgment on 25 May 2021**

This litigation was made up of three linked cases launched in response to the Snowden leaks in 2013. The cases were referred to the Grand Chamber following the Chamber judgment delivered on 13 September 2018, summarised in the 2018–2019 report.[28]

These cases each challenged elements of the UK's investigatory powers regime under the previous legal framework, the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of their lawfulness under Articles 8 and 10. Specifically, the cases focused on bulk interception, international intelligence sharing, and targeted acquisition of communications data. The cases were brought by the privacy campaign group, Big Brother Watch, and other similar organisations.

The judgment was broadly in line with the previous Chamber ruling, concluding that bulk interception is not in itself a violation of the ECHR and that the international intelligence sharing regime does not, in any respect, violate the ECHR. The Grand Chamber accepted that bulk interception is a critical tool for the identification of new threats in the digital domain. However, the Grand Chamber did find violations of Articles 8 and 10 in relation to specific aspects of both the bulk interception and targeted communications data acquisition regimes in RIPA.

RIPA has now been largely replaced by the Investigatory Powers Act 2016 (IPA), which included enhanced safeguards. The IPA introduced a 'double lock' which requires warrants for the use of these powers to be authorised by a Secretary of State and approved by a judge. The Investigatory Powers Commissioner also ensures robust independent oversight of how these powers are used. Most of the deficiencies are dealt with by the IPA. The Data Retention and Acquisition Regulations 2018 also enhanced the safeguards for the IPA's Communications Data regime by introducing a serious crime threshold and independent authorisation of communications data requests.

In consultation with the Investigatory Powers Commissioner, the Government worked to address the remaining few violations relating to aspects of the bulk interception regime that are not deemed to be addressed by the IPA. These relate to additional protections for confidential journalistic material and prior internal authorisation for the use of certain methods used to select bulk intercept material for examination.

[28] https://www.gov.uk/government/publications/responding-to-human-rights-judgments-2018-to-2019

The Home Secretary issued a Written Ministerial Statement on 31 March 2022[29] setting out the Government's plans to deal with the issues that had not otherwise been dealt with by the IPA.

On 20 March 2023, the Government laid before Parliament a document containing a draft of a proposed Remedial Order to amend section 154 of the IPA to introduce enhanced safeguards relating to the selection for examination and retention of confidential journalistic material and sources of journalistic material derived from material acquired through bulk interception.[30] The Joint Committee published its report on 13 June 2023, recommending one change to the draft Remedial Order which has the effect that the Investigatory Powers Commissioner must order the destruction of journalistic material unless convinced that there is an overriding public interest in retaining it.[31] The Government accepted this recommendation.

Representations were also received from the Investigatory Powers Commissioner's Office and the UK Intelligence Community, questioning whether the proposed new section 154 should contain a process for the approval of the use of certain criteria for the selection for examination, or retention of material, in urgent circumstances. The Government agreed that the addition of an urgency provision would be consistent with existing urgency procedures elsewhere within the IPA.

The Government laid a revised draft Remedial Order on 18 October 2023, together with a document containing a summary of the representations and details of the drafting changes made as a result.[32] The Joint Committee published its second report on 15 January 2024 which stated that the Committee was satisfied that the draft Remedial Order adequately addressed the Grand Chamber judgment and recommended that it be approved by Parliament. Following Parliamentary approval, the Remedial Order came into force on 16 April 2024. The Joint Committee requested that the Home Office write on certain elements of the regime within six months of the Remedial Order coming into force. The Home Office wrote to the Clerks of the Committee on 29 October 2024.

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

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29 https://questions-statements.parliament.uk/written-statements/detail/2022-03-31/hcws759

30 https://www.gov.uk/government/publications/amending-the-journalistic-safeguard-of-the-investigatory-powers-act-2016

31 https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195659/more-safeguards-needed-for-interception-of-journalistic-material-jchr-finds/

32 https://www.gov.uk/government/publications/amending-the-journalistic-safeguard-of-the-investigatory-powers-act

# 6. VCL and AN (77587/12 and 74603/12)

**Chamber (Fourth Section) – violation of Articles 4 and 6**
**Final judgment on 5 July 2021**

These joined cases concern two Vietnamese youths who were discovered working on cannabis farms in 2009 and were subsequently convicted of drug cultivation offences, to which they pleaded guilty.

The applicants challenged the Court of Appeal's decisions to dismiss their appeals against prosecution, which had been made on the basis that the Competent Authority had made a 'Conclusive Grounds Decision' in each case that it was more likely than not that the applicants were victims of human trafficking, and therefore that they should not have been prosecuted for offences that had a nexus with their trafficking; and that if they were prosecuted, the proceedings should have been stayed by order of the judge.

The ECtHR found in each case a violation of Article 4 (prohibition of slavery and forced labour) on account of: failure to take sufficient operational measures to protect minors prosecuted despite credible suspicion they were trafficking victims; failure to make sufficient initial and prompt assessment of trafficking status; and not having adequate reasons to continue prosecution despite a positive competent authority decision.

The ECtHR also found in each case a violation of Article 6 (right to a fair trial) on account of: failure to investigate potential trafficking affecting overall fairness of proceedings; evidence constituting a fundamental aspect of their defence not being secured; no waiver of guilty pleas that were not made with full awareness of the facts; and the defect not being remedied by subsequent reviews by domestic authorities relying on inadequate reasons.

The two cases pre-date relevant domestic legislation. In England and Wales, the Modern Slavery Act 2015[33] includes (at section 45) a statutory defence against prosecution where an individual is compelled to commit a crime as a result of their exploitation, except in cases of specified serious offences set out in Schedule 4 to the Act. This is available in appropriate cases in addition to the general principle of the common law defence of duress where a person has been threatened, when considering whether to prosecute.

In Northern Ireland, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)[34] (HTEA) was introduced in 2015 to provide a more robust legal framework to prosecute traffickers and those subjecting people in Northern Ireland to slavery and improved support for victims, whilst also tackling the demand for the services of trafficked victims.

[33] https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

[34] https://www.legislation.gov.uk/nia/2015/2/enacted

Section 22 of the HTEA (Northern Ireland) 2015 creates a statutory defence for victims of human trafficking and slavery-like offences who have been compelled to commit certain offences. The defence under section 22 does not apply in respect of more serious offences.

In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015[35] (HTEA) was introduced in 2015 and provides police and prosecutors with greater powers to detect and bring to justice those responsible for trafficking as well as strengthening protections for victims. The HTEA (Scotland) 2015 included two new criminal offences: i) human trafficking and ii) slavery, servitude and forced or compulsory labour. The maximum penalty for either offence is life imprisonment.

Section 8 of the HTEA (Scotland) 2015 places a duty on the Lord Advocate to issue and publish instructions for prosecutors about the prosecution of suspected or confirmed adult and child victims of the offence of human trafficking and the offence under section 4 (slavery, servitude and forced or compulsory labour). The Lord Advocate's Instructions were issued and published in 2016 and continue to be applied by prosecutors.

The Government continues to work closely with operational partners and the devolved nations to take the necessary steps to implement the judgment. An action plan was submitted to the Committee of Ministers on 5 January 2022, with many of the actions completed on submission. Further action plans were submitted on 10 March 2023 and 1 April 2024 to acknowledge the impact of recent changes in legislation. Some of the ongoing actions include: improving first responders training; introducing the duty to notify for non-consenting adults in Scotland and Northern Ireland; keeping national referral mechanism decision-making times under review, to reduce delays and ensure victims get quality and timely decisions and appropriate support; and monitoring the impact that new legislation may have on the identification of and support for potential victims of trafficking. The Home Office will also continue to work with the Department for Education and local authorities on the prevention of child exploitation.

[35] https://www.legislation.gov.uk/asp/2015/12/contents/enacted

# 7. SW (87/18)

**Chamber (Fourth Section) – violation of Articles 8 and 13**
**Final judgment on 22 September 2021**

The applicant, SW, was a social worker, and acted as an expert witness in care proceedings. The judge in those proceedings, without warning, made a number of critical comments about SW in his judgment which were passed to her employer and led her to being dismissed from her job. She appealed to the Court of Appeal, which acknowledged that the process by which the judge came to make the criticisms was manifestly unfair, and directed that the criticisms be of no effect and removed from the judgment. SW stated that these events led to her becoming ill and unable to work.

The Court of Appeal found that there had been an infringement of her Article 8 rights, as a result of the unfair procedure. However, SW was unable to claim compensation in the domestic courts because of section 9(3) of the HRA which at that time stated: “In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.”

The applicant complained to the ECtHR that the accusations of professional misconduct violated her rights under Articles 6 and 8. Furthermore, she complained of a violation of Article 13 in that at the time of her application she was unable to claim damages for a judicial act done in good faith because of section 9(3) of the HRA.

The ECtHR found that the judge’s direction that his adverse findings be sent to the local authorities and relevant professional bodies without giving the applicant an opportunity to address them in the course of the hearing interfered both unlawfully and disproportionately with her right to respect for her private life under Article 8.

The ECtHR also found a violation of Article 13, read together with Article 8, on the basis that the applicant did not have access to an effective remedy at the national level capable of addressing the substance of her Article 8 complaint and by virtue of which she could obtain appropriate relief.

The ECtHR awarded EUR 24,000 in respect of non-pecuniary damage and EUR 60,000 in respect of costs and expenses, which have been paid.

The violation of Article 8 was due to an independent judicial decision rather than any procedural or legal requirement. Judicial acts are subject to section 6 of the HRA, which provides that it is unlawful for a public authority, including a court or tribunal, to act in a way which is incompatible with a Convention right. The Government has disseminated the judgment to the Heads of the Judiciary of England and Wales, of Northern Ireland, and of Scotland, and to the President of the UK Supreme Court.

The violation of Article 13 arose from the provisions of section 9(3) of the HRA. The previous Government intended to address this violation in the Bill of Rights Bill, which was introduced to the House of Commons on 22 June 2022 and would have repealed and replaced the HRA. Clause 19 (Judicial acts) of the Bill mainly replicated section 9 of the HRA, but included a further targeted exception to the judicial immunity provisions for judicial acts done in good faith in subsection (3). This would have made damages available to compensate a person for a judicial act that was: (i) incompatible with Article 8 of the Convention; and (ii) inconsistent with the requirements of procedural fairness.

The then Lord Chancellor announced in Parliament on 27 June 2023 that the Government had decided not to proceed with the Bill of Rights Bill. The present Government is looking carefully at its legislative agenda and exploring alternative legislative options for the implementation of the *SW* judgment.

# 8. Coventry (6016/16)

**Chamber (Fourth Section) – violation of Article 6, and Article 1 of Protocol 1**
**Final judgment on 6 March 2023**

The applicant was an unsuccessful defendant in a nuisance action which the claimants had funded through a conditional fee arrangement (CFA) and 'after the event' insurance (ATE). The case was appealed to the Supreme Court in *Coventry v Lawrence* [2015] UKSC 50; Coventry lost the case and was ordered to pay approximately £10,000 in damages and 60% of the claimants' costs.

At the time of the original proceedings, the costs and funding provisions in the Access to Justice Act 1999 (AJA) were in force. This legislation provided that an order for costs made by a court against a losing party could include both the success fees payable under a CFA and any ATE insurance premium; that is, that these sums could be recoverable from a losing party, in addition to the base legal costs.

Following the Supreme Court judgment, and the decision that he be liable for the claimants' success fees and ATE insurance premiums, Coventry challenged this decision before the ECtHR. He argued that the costs incurred were disproportionate, and therefore interfered with his rights under Article 6(1) (right to a fair trial) and Article 1 of Protocol 1 (protection of property).

The ECtHR held that the AJA CFA/ATE costs regime had violated Coventry's rights under Article 6(1) and Article 1 of Protocol 1. In its assessment of Article 6(1), the ECtHR held that there was not a fair balance between the parties since Coventry was facing 'rapidly escalating costs', and the Government could not point to any safeguards build into the original scheme to mitigate this risk. In its assessment of Coventry's rights under Article 1 of Protocol 1, the ECtHR held that the original scheme placed an excessive burden on uninsured defendants like Coventry, and was therefore not compatible with the Convention.

The ECtHR considered that the question of the application of Article 41 (just satisfaction) was not ready for decision. Accordingly, the ECtHR reserved the question in whole and invited the Government and the applicant to submit their written observations on the matter within six months from the date on which the judgment became final (later extended until 6 October 2023). Following this, the parties agreed the terms of a friendly settlement and informed the Court of this in May 2024. Having considered the settlement, the Court announced on 15 October that it was appropriate to strike out the case. The Government is now making arrangements to pay the agreed amount and submit an action report.

The Government considers that this is a historic case and no general measures are necessary: since the time of the original proceedings, the AJA costs regime has been reformed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

The AJA regime caused significant additional costs for losing parties in CFA claims, with the losing party having to pay the winning party up to three times the costs they would otherwise have to pay.

Following widespread concern about high costs and a 2010 report by Lord Justice (Sir Rupert) Jackson, Part 2 of LASPO was implemented on 1 April 2013. This generally abolished the recoverability of success fees and ATE insurance premiums, with such costs becoming payable by the CFA client. These reforms have prevented similar violations of Article 6 and Article 1 Protocol 1 to those in *Coventry* from occurring.

# New ECtHR judgments

Four judgments in UK cases became final during the period August 2023 – July 2024. One of these found a violation of the ECHR, requiring the Government to take measures to implement it:

- *Wieder and Guarnieri* (64371/16 and 64407/16) – violation of Article 8
  Chamber (Fourth Section). Final judgment on 12 December 2023

and three did not:

- *Stott* (26104/19) – no violation of Article 14 taken together with Article 5
  Chamber (Fourth Section). Final judgment on 31 January 2024.
- *HA* (30919/20) – no violation of Article 3
  Chamber (Fourth Section). Final judgment on 8 April 2024.
- *Nealon and Hallam* (32483/19 and 35049/19) – no violation of Article 6
  Grand Chamber. Final judgment on 11 June 2024.

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

The adverse judgment and the Government's response are summarised below.[36]

[36] Full details can be found on HUDOC (https://hudoc.echr.coe.int) and HUDOC-EXEC (https://hudoc.exec.coe.int).

# 1. Wieder and Guarnieri (64371/16 and 64407/16)

**Chamber (Fourth Section) – violation of Article 8**
**Final judgment on 12 December 2023**

Like *Big Brother Watch and Others* covered on page 26, this case related to the bulk interception regime previously operated under the Regulation of Investigatory Powers Act 2000 (RIPA).

Wieder and Guarnieri were amongst a large number of individuals who lodged claims with the Investigatory Powers Tribunal (IPT) in 2016 as a result of a global campaign by Privacy International. In these claims they alleged that the Security and Intelligence Agencies had breached Articles 8 and 10 by:

- intercepting, soliciting, obtaining, processing and/or retaining their communications or information under the bulk interception regime, pursuant to a bulk interception warrant under section 8(4) of RIPA; and
- receiving intelligence from US intelligence agencies under sharing arrangements with the United States' National Security Agency.

The IPT dismissed Wieder's and Guarnieri's claims under the HRA on the basis that, as the applicants were situated outside the United Kingdom, it had no jurisdiction to examine those claims. Following this, Wieder and Guarnieri applied to the ECtHR.

The Government accepted that there had been a violation of Article 8 based on the reasons identified in *Big Brother Watch*, and the ECtHR found that there had been a violation of Article 8 on that basis. See under that judgment for the remedies pursued in relation to this violation.

On Article 10, the ECtHR did not consider that the applicants demonstrated that they were victims of the alleged violation as they did not adequately demonstrate that they were communicating for journalistic purposes. As in *Big Brother Watch*, these findings relate to activity carried out under the historic bulk interception regime under RIPA.

In addition to the above, an important element of the judgment was the rejection of the UK's position that the IPT had no jurisdiction to examine Wieder and Guarnieri's initial claims. The IPT originally found that a Contracting State owed no obligation under Article 8 to persons both of whom were situated outside its territory in respect of electronic communications between them which passed through that State.

The ECtHR concluded that the interference with the applicants' Article 8 rights had in fact occurred within the territorial jurisdiction of the UK. This, they argued, was because the interference with privacy of communications occurs *where those communications are intercepted, searched, examined, and used*. Therefore, the resultant injury to the privacy rights of the sender and/or recipient takes place there and not – as the UK had argued –

where the individual is located. Importantly, this is not a change to the ECtHR jurisprudence on extraterritoriality, but rather a finding that it is the location of the activity in question – the interception, searching, etc. – that brings the individual within the UK's jurisdiction for ECtHR purposes. No further action was required in respect of this element.

As with *Big Brother Watch*, the Government considers that all necessary individual and general measures have been taken and has submitted an action report to the Committee of Ministers requesting that it close its supervision of the judgment.

# Earlier declarations of incompatibility

At the start of the reporting year, the Government was addressing two declarations of incompatibility:

- 44. *In the matter of an application by 'JR111' for judicial review (ruling on remedy)*
- 47. *Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities.*

The latest developments are set out below.

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

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

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

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

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

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

This Government has committed to modernising, simplifying, and reforming gender recognition law. We will remove indignities for trans people who deserve recognition and acceptance, whilst retaining the need for a diagnosis of gender dysphoria from a specialist doctor. We will consider how to address the incompatibility as part of these wider reforms.

### 47. Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities

*King's Bench Division; QB-2022-002460; 29 June 2023*

The Mobile Homes Act 1983 (the MHA) provides mobile home occupiers on 'protected sites' with security of tenure through the imposition of implied terms. A protected site is land with planning permission for residential use and in respect of which a site licence is required. In *Murphy v Wyatt* [2011] EWCA Civ 408, the Court of Appeal held that a mobile home occupier would only have security of tenure under the MHA if their pitch was on a 'protected site' at the inception of the agreement.

When the first defendant initially moved on to the claimants' land, the site was not a protected site. Planning permission was later obtained by the claimants who then served a notice to quit on the first defendant. The first defendant refused to vacate the site on the basis that he had security of tenure under the MHA following the grant of planning permission. The first defendant argued that the relevant provision of the MHA was incompatible with his Article 8 rights (right to respect for private and family life). The Secretary of State was joined as the appropriate defendant, in order to respond to the human rights aspect of the proceedings.

The High Court found that the severity of the effects on a person in the first defendant's position of not receiving the benefit of the implied terms, must outweigh and therefore render disproportionate any implicit support which the terms of the MHA might provide for an objective. Those objectives include seeking to deter potential mobile home occupiers from entering into occupation prior to the grant of planning permission for the relevant site because the MHA protection can never be obtained even if planning permission is subsequently obtained.

The Court made a declaration that "by excluding from the scope of the Mobile Homes Act 1983 persons whose occupation agreements pre-date (but continue after) the grant of planning permission, s.1 of that Act infringes those persons' rights under Article 8 of the European Convention on Human Rights."

The time limit for the defendants to appeal the decision passed on 26 June 2023.
The Government is considering its options and response to the declaration of incompatibility.

# New declarations of incompatibility

The domestic courts made 11 declarations of incompatibility under section 4 of the HRA in five judgments during the period August 2023 – July 2024. These are the 48th to 58th declarations made since section 4 came into force on 2 October 2000.

### 48. R (on the application of Jesse Quaye) v Secretary of State for Justice

*King's Bench Division; [2024] EWHC 211 (Admin); 9 February 2024*

Detention at His Majesty's Pleasure (DHMP) is a mandatory life sentence for individuals who commit murder as a child (i.e., when under 18 years of age). Before February 2021, all individuals sentenced to DHMP could apply to the Secretary of State for a review of their minimum term (1) after having served half that term and (2) every two years thereafter.

The policy was revised with effect from February 2021. From then, individuals sentenced to DHMP while under 18 years of age could still apply for a review after having served half their minimum term but could apply for additional reviews every two years thereafter until they turn 18. Individuals who had turned 18 before sentencing could no longer apply for a review of their minimum term. The policy change applied retrospectively to all prisoners sentenced to DHMP. This change was proposed in the 2020 Sentencing White Paper and was then codified in section 128 of the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act) and when enacted, gave powers under section 27A of the Crime (Sentences) Act 1997.

Jesse Quaye was convicted of a murder he committed as a child and was sentenced to DHMP at 18 prior to the 2021 policy change. In his claim, Mr Quaye argued that the legislation is incompatible with the ECHR. The Secretary of State for Justice argued that the PCSC Act sufficiently answers the claim in that the claimant is now subject to lawful legislation.

The High Court heard this case in January 2024. The claimant's case set out four grounds of incompatibility with the ECHR (Articles 5, 6, 7 and 14). Much of the claimant's argument centred on unlawful differential treatment, asserting that the policy discriminates between who are sentenced under 18, who retain a right to a review until they turn 18, and those who are sentenced after 18, who have no right to review at all (Article 14 prohibition of discrimination – age). The claimant's case argued the arbitrariness of making 18 the cut-off, because development continues well into young adulthood and that this policy commits individuals to periods of custody that may be counter to their rehabilitation (Article 5 right to liberty and security – arbitrary detention).

On 9 February, the Court made a declaration of incompatibility. It ruled that the changes set out in the PCSC Act are incompatible with Articles 5 and 14. The Court did not accept that legislation can draw a bright line cut-off for those sentenced at the age of 18 or over so as to remove the tariff review. It ruled that Article 6 (right to a fair trial) is not engaged and that Article 7 (no punishment without law – retroactivity) is academic given the Article 5 ruling.

On 16 February, the Secretary of State appealed and on 14 March an appeal was granted. A Court of Appeal hearing is listed for February 2025.

### 49–53. In the matter of applications by Martina Dillon & Others, Teresa Jordan, Patrick Fitzsimmons & Gemma Gilvary for Judicial Review

*King's Bench Division (NI); [2024] NIKB 11; 28 February 2024*

On 28 February 2024, the Northern Ireland High Court made the following declarations of incompatibility in relation to the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023:

- a declaration that the immunity from prosecution provisions are incompatible with Articles 2 and 3;
- a declaration that section 43(1) (Troubles-related civil actions brought on or after 17 May 2022 may not be continued) is incompatible with Article 6;
- a declaration that section 8 (exclusion of evidence in civil proceedings) is incompatible with Articles 2, 3, and 6;
- a declaration that section 41 (prohibition of criminal enforcement action for non-serious/connected Troubles-related offences) is incompatible with Article 2; and
- a declaration that parts of sections 46 and 47 (interim custody orders) are incompatible with Article 6 and Article 1 Protocol 1.

The Court found that the provisions which are incompatible with the ECHR (other than those in sections 46 and 47) also breach the non-diminution commitment in Article 2(1) of the Windsor Framework. The Court found that the consequence of breach of Article 2(1) of the Windsor Framework is disapplication of those provisions.

The High Court judgment was subject to appeal to the Northern Ireland Court of Appeal by the previous Government, and to cross-appeal by the applicants. The appeal was heard in June 2024. On 29 July 2024 the Secretary of State for Northern Ireland laid a Written Ministerial Statement in Parliament confirming that the Government has formally abandoned all its grounds of appeal against these declarations of incompatibility.

The Government asked the Court to continue with its consideration of the interpretation and effect of Article 2(1) of the Windsor Framework, while the applicants continued to

pursue their cross-appeal. The judgment of the Court of Appeal was delivered on 20 September 2024 ([2024] NICA 59).

In summary, the Court of Appeal recognised the wide powers, unfettered access to information, and structural independence of the Independent Commission for Reconciliation and Information Recovery. However, the Court also found that "issues arise in relation to effective next of kin participation and the role of the SOSNI [Secretary of State for Northern Ireland] in relation to disclosure in cases where, previously, an inquest would have been required to discharge the state's article 2 obligations."

In relation to Article 2 of the Windsor Framework, the Court of Appeal upheld the High Court's findings, ruling that victims' rights, including those protected under Article 11 of the Victim's Directive, had been diminished by the conditional immunity provisions in the Act. The Court of Appeal ruled that the Government could not have legislated contrary to the Victim's Directive prior to EU exit and that the test for direct effect had been met, upholding the High Court's disapplication of the impugned provisions. The Government is now carefully considering this judgment, and laid a further Written Ministerial statement in Parliament on 7 October 2024 providing an initial response.[37]

### 54. Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)

*Supreme Court; [2024] UKSC 12; 17 April 2024*

This case was brought by a worker, supported by the Unison union, who allegedly suffered detriment, short of dismissal, for taking part in industrial action. The case relates to whether an employer may subject workers to detriment, short of dismissal, where they participate in lawful industrial action. The domestic law as it stands broadly permits such action by employers. The Department for Business and Trade intervened in the proceedings to defend the UK's trade union legislation.

The Supreme Court found that section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 is incompatible with Article 11 (freedom of assembly and association) in so far as it fails to provide any protection against detriments (sanctions, short of dismissal), intended to deter or penalise trade union members from taking part in lawful strike action organised by their union. The Court made a declaration of incompatibility to that effect.

The Government expects, when Parliamentary time allows, to bring forward primary legislation to amend the law on detriment and to address the incompatibility.

[37] https://questions-statements.parliament.uk/written-statements/detail/2024-10-07/hcws108

### 55–57. In the matter of an application by the Northern Ireland Human Rights Commission for judicial review, in the matter of an application by JR295 for judicial review and in the matter of the Illegal Migration Act 2023

*King's Bench Division (NI); [2024] NIKB 35; 13 May 2024*

The Northern Ireland Human Rights Commission (NIHRC) and Applicant JR295 (an unaccompanied child and anonymised) brought claims against uncommenced provisions in the Illegal Migration Act 2023 (IMA). They argued that several of the key provisions of the IMA (i) are incompatible with the ECHR and (ii) breach Article 2 of the Windsor Framework.

On 13 May 2024, the Northern Ireland High Court handed down its judgment. The Court disapplied provisions as incompatible with Article 2 of the Windsor Framework and declared provisions as incompatible with the ECHR. Specifically on ECHR, the judge ruled the following core provisions are incompatible with Articles 3, 4, 6 and 8, and made declarations of incompatibility in respect of:

- sections 2(1), 5(1), 6(3) and 6(7) insofar as they impose a duty to remove;
- sections 2(1), 5, 6 and 22 insofar as they relate to potential victims of modern slavery or human trafficking; and
- sections 2(1), 5(1) and 6 relating to children.

The judge found that the restriction on the ability to challenge age assessment decisions in section 57 of the IMA is incompatible with Articles 6 and 8 but did not make a declaration of incompatibility given the facts of the *JR295* case where the individual has been the subject of age assessment which had resolved in his favour. The judge also found that section 13(4) of the IMA (only ability to challenge detention in the first 28 days by way of habeas corpus) is not necessarily incompatible with Article 5:

> "[236] The remedy of habeas corpus may have been out of fashion in asylum and immigration cases since *Cheblak*, and judicial review has been seen as having procedural primacy. However, the respondents themselves say in argument that the principles would apply to either remedy in the same way. It remains to be seen whether the courts will seek to reinvigorate habeas corpus in due course.
>
> [237] On that basis, it cannot be said, at least for the purposes of an ab ante challenge, that the detention provisions cannot be operated in a Convention compliant way…"

The Government has filed a notice of appeal within the time allowed for such a notice under the Northern Ireland court rules, against all findings against the IMA made in the first instance. The Court of Appeal hearing is provisionally booked for 4–7 March 2025.

### 58. R (on the application of Smith) v Secretary of State for the Home Department

*King's Bench Division; [2024] EWHC 1137 (Admin); 14 May 2024*

The Police, Crime, Sentencing and Courts (PCSC) Act 2022 strengthened police powers to deal with unauthorised encampments by amending the Criminal Justice and Public Order Act 1994. The legislation introduced a new criminal offence of residing on land without consent in or with a vehicle. The legislation also amended existing powers to make it easier for the police to direct trespassers away from land. If a person has been directed to leave the land under these powers, it is a criminal offence for them to return within 12 months. This 'no-return' period allows the police to arrest the person and seize their vehicle(s) if they return within this time. Before the PCSC Act 2022, the no-return period for the existing power to direct trespassers away was 3 months.

The amendments made through the PCSC Act 2022 were the subject of a judicial review. The case was brought by Wendy Smith, a Romany woman, as the claimant, with the groups Friends, Families and Travellers and Liberty as interveners. The claimant contended that the amendments are incompatible with the Convention rights because they give rise to discrimination.

One of the claimant's grounds related to the 12-month no-return period. The claimant argued that the extension of the no-return period from 3 months to 12 months is disproportionate given the maximum permitted length of stay on a transit pitch, which is an authorised temporary site used by travellers, is 3 months. This means that they will no longer be able to avoid the risks of criminal penalty by resort to transit pitches, making it difficult for them to comply with the law.

The High Court accepted this submission by the claimant. The Court found that the extension of the no-return period narrows the options available to comply with the requirements of the provisions. This is because the current rules only allow individuals to remain at transit sites for a maximum of 3 months and there is an undersupply of transit sites, meaning that there is little opportunity for the individual to move to another transit site after the 3-month period has expired. This disadvantages the individual as they have no authorised site to move to but are also unable to return to the original site without committing an offence.

The High Court rejected the remainder of the claimants' arguments. This means that the claim only succeeded on the submission relating to the duration of the no-return period and failed on all other grounds. The High Court's judgment was officially handed down on 14 May 2024. The High Court has since made a declaration of incompatibility directed to the relevant sections of the legislation.

The Government is committed to protecting and preserving the rights of individuals to live a private life, including a nomadic lifestyle, without discrimination. We are carefully considering the judgment in order to determine the best way forward.

# Annex A: All declarations of incompatibility

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

Since section 4 of the HRA came into force on 2 October 2000 until the end of July 2024, 58 declarations of incompatibility have been made.

Of these, 45 have been fully addressed:
- 12 have been overturned on appeal (and there is no scope for further appeal);
- 5 related to provisions that had already been amended by primary legislation at the time of the declaration;
- 11 have been addressed by Remedial Order;
- 16 have been addressed by primary or secondary legislation (other than by Remedial Order);
- 1 has been addressed by various measures;

and 13 are ongoing:
- 5 are currently open to appeal;
- 5 the Government has proposed to address by Remedial Order;
- 3 are currently under consideration by the Government.

The cases in each category are listed below. They are numbered in chronological order of the initial making of a declaration of incompatibility (rather than any appeals). The 2019 report was the last to give full details of all cases (at that time, cases 1–42). For cases which have been fully addressed since then, the report containing the final update is indicated in superscript after the case name in the list below.[38]

**Overturned on appeal**

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

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

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

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

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

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

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

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

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

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

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

45. In the matter of an application by JR123 for judicial review(2023 report)
*Queen's Bench Division (NI); [2021] NIQB 97; 1 November 2021*

46. R v Marks, Morgan, Lynch and Heaney(2023 report)
*Court of Appeal (NI); [2021] NICA 67; 22 December 2021*

**Provisions already amended by primary legislation**

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

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

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

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

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

**Addressed by Remedial Order**

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

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

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

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

30. Benkharbouche and Janah v Embassy of the Republic of Sudan, and Libya(2023 report)
*Court of Appeal; [2015] EWCA Civ 33; 5 February 2015*

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

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

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

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

41. Siobhan McLaughlin, Re Judicial Review (Northern Ireland)(2023 report)
*Supreme Court; [2018] UKSC 48; 30 August 2018*

43. Jackson and Simpson v Secretary of State for Work and Pensions(2023 report)
*Administrative Court; [2020] EWHC 183 (Admin); 7 February 2020*

**Addressed by other primary or secondary legislation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Addressed by various measures**

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

**Open to appeal**

48. R (on the application of Jesse Quaye) v Secretary of State for Justice
*King's Bench Division; [2024] EWHC 211 (Admin); 9 January 2024*

55–57. In the matter of an application by the Northern Ireland Human Rights Commission for judicial review, in the matter of an application by JR295 for judicial review and in the matter of the Illegal Migration Act 2023
*King's Bench Division (NI); [2024] NIKB 35; 13 May 2024*

58. R (on the application of Smith) v Secretary of State for the Home Department
*King's Bench Division; [2024] EWHC 1137 (Admin); 14 May 2024*

**Proposed to address by Remedial Order**

49–53. In the matter of applications by Martina Dillon & Others, Teresa Jordan, Patrick Fitzsimmons & Gemma Gilvary for Judicial Review
*King's Bench Division (NI); [2024] NIKB 11; 28 February 2024*

**Under consideration**

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

47. Dean, Haggart and Harding v Mitchell and Secretary of State for Levelling-Up, Housing and Communities
*King's Bench Division; QB-2022-002460; 29 June 2023*

54. Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)
*Supreme Court; [2024] UKSC 12; 17 April 2024*

# Annex B: Statistical information on implementation of ECtHR judgments

Data in tables 1 and 2 are taken from the Annual Reports of the Committee of Ministers, 'Supervision of the execution of judgments and decisions of the European Court of Human Rights'.[39] The source table is indicated in brackets. 'Case' in these statistics refers to a final judgment or decision of the ECtHR (including strike-out decisions following a friendly settlement).

**Table 1: Statistics on UK cases**

| **New cases under supervision (B.4)** | **2021** | **2022** | **2023** |
|---|---|---|---|
| All cases | 10 | 11 | 4 |
| of which leading cases | 6 | 4 | 1 |
| **Cases closed by final resolution (D.4)** | **2021** | **2022** | **2023** |
| All cases | 9 | 13 | 6 |
| of which leading cases | 3 | 4 | 4 |
| **Pending cases at year end (C.4)** | **2021** | **2022** | **2023** |
| All cases | 16 | 14 | 12 |
| of which leading cases | 11 | 11 | 8 |
| **Leading cases by time pending (C.5)** | **2021** | **2022** | **2023** |
| Pending <2 years | 5 | 5 | 1 |
| Pending 2–5 years | 1 | 2 | 5 |
| Pending >5 years | 3 | 3 | 2 |
| **Payment of just satisfaction (E.2)** | **2021** | **2022** | **2023** |
| Paid within deadline | 4 | 8 | 1 |
| Paid outside deadline | 1 | 5 | 1 |
| Awaiting confirmation of payment | 5 | 1 | 1 |
| **Just satisfaction (E.1)** | **2021** | **2022** | **2023** |
| Total awarded (€) | 588,429 | 157,552 | 674,186 |

[39] https://www.coe.int/en/web/execution/annual-reports

**Table 2: Pending cases at year end by State (C.4)**

| Ranking by 2023 pending cases | State | All pending cases | | | of which leading cases | | |
|---|---|---|---|---|---|---|---|
| | | 2021 | 2022 | 2023 | 2021 | 2022 | 2023 |
| 1 | Russian Federation[40] | 1,942 | 2,352 | **2,566** | 217 | 228 | 238 |
| 2 | Ukraine | 638 | 716 | **766** | 106 | 99 | 103 |
| 3 | Romania | 409 | 509 | **476** | 106 | 113 | 115 |
| 4 | Türkiye | 510 | 480 | **446** | 139 | 126 | 124 |
| 5 | Azerbaijan | 271 | 285 | **337** | 49 | 53 | 50 |
| 6 | Italy | 170 | 187 | **249** | 58 | 59 | 66 |
| 7 | Bulgaria | 164 | 182 | **166** | 92 | 93 | 89 |
| 8 | Hungary | 265 | 219 | **165** | 47 | 43 | 45 |
| 9 | Republic of Moldova | 170 | 153 | **162** | 51 | 45 | 46 |
| 10 | Poland | 97 | 125 | **131** | 38 | 46 | 46 |
| 11 | Georgia | 63 | 68 | **78** | 27 | 27 | 27 |
| 12 | Serbia | 76 | 97 | **77** | 12 | 13 | 14 |
| 13= | Armenia | 50 | 57 | **70** | 24 | 23 | 28 |
| | Greece | 93 | 70 | **70** | 34 | 27 | 28 |
| 15 | Slovak Republic | 63 | 59 | **69** | 20 | 24 | 29 |
| 16 | Croatia | 79 | 77 | **67** | 25 | 26 | 27 |
| 17 | Malta | 39 | 46 | **57** | 13 | 15 | 15 |
| 18 | Albania | 31 | 36 | **54** | 14 | 16 | 24 |
| 19 | Portugal | 28 | 39 | **48** | 17 | 15 | 16 |
| 20 | France | 32 | 39 | **42** | 25 | 29 | 20 |
| 21 | Belgium | 37 | 44 | **36** | 21 | 22 | 21 |
| 22 | Lithuania | 32 | 38 | **34** | 16 | 19 | 22 |
| 23 | North Macedonia | 47 | 29 | **33** | 15 | 11 | 13 |
| 24 | Bosnia and Herzegovina | 34 | 42 | **31** | 12 | 13 | 11 |
| 25 | Spain | 37 | 30 | **30** | 23 | 21 | 23 |
| 26 | Cyprus | 13 | 10 | **13** | 10 | 9 | 10 |
| 27= | Germany | 16 | 14 | **12** | 13 | 12 | 10 |
| | United Kingdom | 16 | 14 | **12** | 11 | 11 | 8 |
| 29 | Switzerland | 9 | 11 | **11** | 8 | 8 | 9 |

[40] The statistics for Russia are in a separate chapter of the Committee of Ministers' report, table B.2.

| Ranking by 2023 pending cases | State | All pending cases | | | of which leading cases | | |
|---|---|---|---|---|---|---|---|
| | | 2021 | 2022 | 2023 | 2021 | 2022 | 2023 |
| 30 | Austria | 12 | 6 | **10** | 6 | 3 | 6 |
| 31= | Latvia | 9 | 8 | **8** | 7 | 8 | 8 |
| | Czech Republic | 6 | 7 | **8** | 2 | 4 | 5 |
| 33= | Netherlands | 10 | 4 | **7** | 8 | 4 | 5 |
| | Denmark | 4 | 4 | **7** | 3 | 3 | 3 |
| 35= | Slovenia | 4 | 6 | **6** | 4 | 4 | 5 |
| | Montenegro | 7 | 9 | **6** | 5 | 5 | 3 |
| | Finland | 18 | 18 | **6** | 9 | 9 | 2 |
| | Norway | 12 | 4 | **6** | 2 | 1 | 1 |
| 39 | Luxembourg | 0 | 3 | **4** | 0 | 1 | 2 |
| 40= | Estonia | 1 | 3 | **3** | 1 | 3 | 3 |
| | San Marino | 3 | 2 | **3** | 2 | 2 | 3 |
| 42 | Ireland | 5 | 2 | **2** | 2 | 2 | 2 |
| 43 | Sweden | 2 | 2 | **1** | 2 | 2 | 1 |
| 44= | Andorra | 0 | 0 | **0** | 0 | 0 | 0 |
| | Iceland | 6 | 5 | **0** | 2 | 1 | 0 |
| | Liechtenstein | 2 | 0 | **0** | 1 | 0 | 0 |
| | Monaco | 1 | 1 | **0** | 1 | 1 | 0 |
| | **Total** | **5,533** | **6,112** | **6,385** | **1,300** | **1,299** | **1,326** |

**Table 3: Judgments finding a violation against the UK under the supervision of the Committee of Ministers at the end of July 2024**

| Case name | Application | Final judgment |
|---|---|---|
| **Enhanced Procedure** | | |
| *McKerr group* | | |
| McKerr | 28883/95 | 4 August 2001 |
| Kelly and Others | 30054/96 | 4 August 2001 |
| Finucane | 29178/95 | 1 October 2003 |
| *Gaughran group* | | |
| S and Marper | 30562/04 and 30566/04 | 4 December 2008 |
| Gaughran | 45245/15 | 13 June 2020 |
| VCL and AN | 77587/12 and 74603/12 | 5 July 2021 |
| **Standard Procedure** | | |
| Catt | 43514/15 | 24 April 2019 |
| Big Brother Watch and Others | 58170/13 etc. | 25 May 2021 |
| SW | 87/18 | 22 September 2021 |
| Coventry | 6016/16 | 6 March 2023 |
| Wieder and Guarnieri | 64371/16 and 64407/16 | 12 December 2023 |

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