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Joint Committee on
Human Rights

Human Rights Judgments

Seventh Report of Session 2014–15

Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at <http://www.parliament.uk/jchr>

Current Staff

The current staff of the Committee is: Mike Hennessy (Commons Clerk), Megan Conway (Lords Clerk), Murray Hunt (Legal Adviser), Michelle Owens (Senior Committee Assistant), and Keith Pryke (Office Support Assistant).

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1 Introduction

Background

1.1 At the beginning of this Parliament, we decided to continue the practice established by our predecessor Committees of scrutinising the Government's responses to court judgments concerning human rights, made both by the UK courts and the European Court of Human Rights. Like our predecessor Committees, we believe that Parliament often has an important role to play following a court judgment which finds a law, policy or practice in breach of human rights. That role includes considering whether a change in the law is necessary in light of the judgment and, if so, what that change should be, and then scrutinising the adequacy and timeliness of the Government's response to the judgment. Such parliamentary scrutiny facilitates democratic input into legal changes following court judgments and so helps to counter the perception that the legal protection of human rights tends to marginalise the role of democratic institutions.

1.2 We adopted the Guidance for Departments published by our predecessor Committee at the end of the last Parliament¹ as the basis for our ongoing scrutiny of the Government's responses to court judgments, and we also actively sought to encourage more input from civil society into our work on human rights judgments. We issued a call for evidence early in the Parliament, asking for submissions in relation to any judgments in which UK courts or the European Court of Human Rights had found a breach of human rights, and identifying a number of specific issues raised by some of those judgments on which we were particularly keen to receive submissions.²

1.3 Over the course of this Parliament, our methodology in scrutinising the Government's response to human rights judgments has continued to evolve. In the 2005–2010 Parliament, our predecessor Committee reported periodically on human rights judgments, publishing four Reports altogether on the subject over the life of the Parliament.³ In the current Parliament, we have not published dedicated periodic Reports but rather have sought to integrate our work on human rights judgments into other aspects of our work. The purposes of this Report, which is our only Report on Human Rights Judgments in the current Parliament, are to inform Parliament about our activities in relation to human rights judgments over the course of the Parliament; to identify what we consider to be the most serious issues on which inadequate progress is being made towards implementation and to make some specific recommendations in relation to particular judgments; and to make some more general recommendations about how to increase still further Parliament's involvement following court judgments concerning human rights.

1 Guidance for Departments on Responding to Court Judgments on Human Rights, Annex to Fifteenth Report of Session 2009–10, *Enhancing Parliament's role in relation to human rights judgments*, HL Paper 85/HC 455.

2 JCHR to review *Government's response to judgments identifying breaches of human rights in the UK* (10 September 2010) <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/human-rights-judgments-call-for-evidence/>

3 Thirteenth Report of Session 2005–06, *Implementation of Strasbourg Judgments: First Progress Report*, HL Paper 133/HC 954; Sixteenth Report of Session 2006–07, *Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights*, HL Paper 128/HC 728; Thirty-First Report of Session 2007–08, *Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008*, HL Paper 173/HC 1078; and Fifteenth Report of Session 2009–10, *Enhancing Parliament's role in relation to human rights judgments*, HL Paper 85/HC 455.

1.4 This change in our approach to our work on human rights judgments has been greatly assisted by the Government’s publication of annual reports to us setting out the Government’s position on the implementation of adverse human rights judgments from the European Court of Human Rights and the domestic courts, in advance of our evidence sessions with the Lord Chancellor and Secretary of State for Justice. We welcome the provision of these regular reports on human rights judgments and commend the Government for its positive response to the recommendation of our predecessor Committee. In chapter 6 below we consider whether there is scope to make the Government’s report on human rights judgments even more useful to Parliament.

Our work on human rights judgments in the 2010–15 Parliament

1.5 We were grateful to receive a number of submissions in response to our call for evidence on human rights judgments in 2010, and we used those submissions to help us decide which issues to prioritise in our scrutiny of the Government’s responses.

1.6 We scrutinised the Government’s response to certain judgments in a number of our legislative scrutiny Reports. In our Report on the Protection of Freedoms Bill, for example, we scrutinised the Government’s response in England and Wales to the Court’s judgment on the legal framework for the retention of biometric data in *Marper v UK*.⁴ We continued to press the Government to accept the full implications, in a variety of contexts, of the judgment of the European Court of Human Rights in *A v UK* that the right to a fair hearing in Article 6(1) of the Convention requires that a person whose Convention rights are affected by various counter-terrorism measures must be given sufficient information about the allegations against them to enable them to give effective instructions to their special advocate.⁵

1.7 We also scrutinised and reported on three remedial orders introduced by the Government to give effect to court judgments which found particular provisions of UK law to be incompatible with the Convention. The first remedial order concerned the abolition of the “Certificate of Approval” scheme whereby people subject to immigration control were required to obtain the Home Secretary’s permission to marry, other than in a Church of England religious ceremony, which the House of Lords had declared incompatible with the right to marry without discrimination on grounds of religion.⁶

1.8 The second remedial order concerned the exceptional counter-terrorism power to stop and search without reasonable suspicion, after the European Court in *Gillan and Quinton v UK* had found the legal framework for such stop and searches to be incompatible with the right to respect for private life, because the powers were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.⁷

4 *Legislative Scrutiny: Protection of Freedoms Bill*, Eighteenth Report of Session 2010–12, HL Paper 195/HC 1490, paras 6–87.

5 See e.g. Fourth Report of Session 2010–12, *Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Second Report)*, HL Paper 53/HC 598, paras 1.15–1.24; TPIMs reports; Justice and Security Green Paper and Justice and Security Bill Reports.

6 Fifth Report of Session 2010–12, *Proposal for the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Remedial) Order 2010*, HL Paper 54/HC 599; Ninth Report of Session 2010–12, *Draft Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Remedial) Order 2010—second Report*, HL Paper 111/HC 859.

7 Fourteenth Report of Session 2010–12, *Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion*, HL Paper 155/HC 1141; Seventeenth Report of Session 2010–12, *Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (Second Report)*, HL Paper 192/HC 1483.

1.9 The third remedial order concerned the lack of opportunity for independent review of the requirement to be on the sex offenders' register indefinitely, which the UK courts found to be a disproportionate interference with the right to respect for private life.⁸

1.10 In relation to each of these remedial orders we made detailed recommendations as to how the Government's proposed response to the relevant judgment could be improved, and although the Government did not accept all of our recommendations it did engage constructively with our scrutiny of the remedial orders and made a number of significant changes in the light of our Reports.

1.11 During this Parliament, as part of our work on human rights judgments, we also took oral evidence for the first time from judges, including the President of the Supreme Court and the Lord Chief Justice, and the President and Registrar of the European Court of Human Rights.⁹ In addition, we took oral evidence from the Government ministers responsible for human rights and asked them questions about the Government's response to certain judgments.¹⁰

1.12 We visited the Court in Strasbourg, where we had meetings with Judges from the Court, officials from the Court Registry and the Department for the Execution of Judgments in the Committee of Ministers, and members of our sister committee in the Parliamentary Assembly of the Council of Europe, the Committee for Legal Affairs and Human Rights.

1.13 In July 2013 we published another call for evidence, inviting submissions on the Government's latest report on human rights judgments, on any cases in which a breach of human rights had been found, and on a number of specific issues which we identified.¹¹ We are again grateful to all those who responded to our call for evidence.¹² We considered all of the submissions, even though we do not report here on all of the issues raised, but focus on those where there remain outstanding issues and measures of implementation are still required.

8 Nineteenth Report of Session 2010–12, *Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011*, HL Paper 200/HC 1549; First Report of Session 2012–13, *Draft Sexual Offences Act 2003 (Remedial) Order 2011*, HL Paper 8/HC 166.

9 <http://www.parliament.uk/documents/joint-committees/human-rights/JCHR%2015%20November%20transcript.pdf> ; http://www.parliament.uk/documents/joint-committees/human-rights/JCHR_Transcript_13_March_2012_UNCORRECTED.pdf.

10 See e.g. http://www.parliament.uk/documents/joint-committees/human-rights/Corrected_Oral_evidence_201211.pdf; http://www.parliament.uk/documents/joint-committees/human-rights/HC915_13-12-18_TRANSCRIPT_Grayling_Davies.pdf

11 *Human Rights Judgments—Call for Evidence (17 July 2013)* <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/human-rights-judgments-call-for-evidence/>

12 We received evidence from the AIRE Centre and Kalayaan; Bail for Immigration Detainees; the British Humanist Association; ECPAT UK; the Equality and Human Rights Commission; Dr. Matthew Gibson; the Immigration Law Practitioners' Association; the Law Society; the Law Society of Scotland; Liberty; the Mental Health in Immigration Detention Action Group; the Ministry of Justice; the National Secular Society; the Prison Reform Trust; and Zaiwalla & Co.

2 Judgments of the European Court of Human Rights

The factual context

2.1 During this Parliament, there has been controversy over whether some newspapers have been misleading in their presentation of statistics about judgments of the European Court of Human Rights. On 12 January 2012, for example, the Daily Mail's front page story carried the headline: *Europe's war on British justice: UK loses 3 out of 4 human rights cases, damning report reveals*.¹³ The Telegraph ran a similar story.¹⁴ On 24 August 2014, the Sun carried a similar piece under the headline *Euro judges go against UK in 3 out of 5 cases*.¹⁵

2.2 In fact, the proportion of cases which the UK loses in the European Court of Human Rights is not 75% or 60%, as these press stories claimed, but closer to 1%. The newspaper stories did not take into account the large number of applications against the UK which are rejected by the Court as inadmissible. As the Government's report, *Responding to human rights judgments*, makes clear,¹⁶ between 1959 and the end of 2013 the proportion of applications against the UK which resulted in a finding of a violation of the Convention was 1.34%. The proportion of cases resulting in a finding of a violation has also been steadily reducing in recent years: it was approximately 1.3% in 2010, 1% in 2011 and 0.6% in both 2012 and 2013.

2.3 On 7 October 2013 the Daily Mail ran a front page story under the headline *Human right to make a killing: damning dossier reveals taxpayers' bill for European court payouts to murderers, terrorists and traitors*.¹⁷ The article claimed that the European Court "handed the criminals taxpayer-funded payouts of £4.4 million—an average of £22,000 a head." The article provoked an unprecedented statement in response from the European Court of Human Rights, through its Registrar, expressing concern about "the frequent misrepresentation of its activities in the British media."¹⁸ The Court complained that the information was being presented in a way which was "seriously misleading". It pointed out that the figure of £4.4 million included legal costs as well as compensation, and that the figure for compensation was £1.7 million. It also pointed out that "it is simply not true to suggest that all the applicants in respect of whom the Court has found violations since 1998 were criminals."

2.4 The Daily Mail subsequently published a correction on 10 November 2013, in which it said "An article on 8 October said that the UK has paid £4.4 million in compensation to criminals under rulings by the European Court of Human Rights. In fact, the money went

13 <http://www.dailymail.co.uk/news/article-2085420/Europes-war-British-justice-UK-loses-human-rights-cases-damning-report-reveals.html>

14 <http://www.telegraph.co.uk/news/worldnews/europe/9008904/ECHR-Britain-loses-3-in-4-cases-at-human-rights-court.html>

15 <http://www.thesun.co.uk/sol/homepage/news/politics/5850957/Euro-judges-go-against-UK-in-3-out-of-5-cases.html>

16 *Responding to human rights judgments: Report to the Joint Committee on Human Rights on the Government response to human rights judgments 2013–14*, Cm 8962 (December 2014), p. 15.

17 <http://www.dailymail.co.uk/news/article-2449256/Human-right-make-killing-Damning-dossier-reveals-taxpayers-European-court-payouts-murderers-terrorists-traitors.html>

18 http://www.humanrightseurope.org/2013/10/court-concern-at-seriously-misleading-uk-news-articles/?utm_source=twitterfeed&utm_medium=twitter

to a range of claimants and only £1.7 million was compensation; legal costs accounted for the rest.”

2.5 In this Report we seek to present dispassionately the factual context in which political debates about the European Court of Human Rights should take place, by analysing closely the latest available statistics.

The number of Strasbourg judgments finding a violation by the UK

2.6 The latest available statistics from the European Court of Human Rights show that the number of judgments in cases against the UK in which the Court found a violation of the Convention has continued its significant downward trend of recent years. In 2013 there were only 8 such judgments by the European Court.¹⁹ According to the Court’s most recent Annual Report,²⁰ in 2014 there were only 4 new judgments finding a violation by the UK.²¹ The statistics also show that in 2014 the UK was, of all the 47 member states of the Council of Europe, the State with the highest number of judgments (10) finding no violation of the Convention.

2.7 These figures demonstrate that over the course of this Parliament there has continued to be a steady decline in the number of adverse judgments of the European Court of Human Rights against the UK: in 2008, for example, there were 28 such judgments and in 2002 there were 30.

2.8 We draw Parliament’s attention to the significant downward trend in the number of judgments of the European Court of Human Rights which have found the UK to be in breach of the ECHR. We also draw to Parliament’s attention the wide discrepancy between some of the media coverage of the statistics about judgments of the European Court of Human Rights and the facts as contained in the statistics themselves.

The UK’s record on implementing judgments of the European Court

2.9 We have also considered the latest available statistics from the Committee of Ministers of the Council of Europe which show that the number of UK cases in which the judgment has not yet been implemented has also continued its significant downward trend.²²

2.10 Analysis of these statistics shows that, subject to three main qualifications which are considered below, the UK generally has a very good record on the implementation of judgments of the European Court of Human Rights. The number of UK cases which have not been implemented to the satisfaction of the Committee of Ministers, and which are therefore still under supervision, has continued to fall year on year over the course of this Parliament. At the end of 2011 there were 40 cases against the UK still under supervision; 39 at the end of 2012; and 27 at the end of 2013.

2.11 Although the official statistics for 2014 will not be published by the Committee of Ministers until March this year, the Government’s report, *Responding to human rights*

19 http://www.echr.coe.int/Documents/Annual_report_2013_ENG.pdf

20 http://www.echr.coe.int/Documents/Annual_Report_2014_ENG.pdf

21 *Annual Report 2014 of the European Court of Human Rights, Council of Europe*
http://www.echr.coe.int/Documents/Stats_violation_2014_ENG.pdf (published 30 January 2015).

22 http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2013_en.pdf

judgments, says that towards the end of 2014 the number of cases under supervision was 12 (if the so-called “McKerr Group” of cases, which comprises 6 cases from Northern Ireland raising similar issues concerning the investigation of the use of lethal force, are treated as one). During 2014, the Committee of Ministers adopted final resolutions, closing its supervision of the case, in 16 UK cases.

2.12 We commend the Government for its generally very good record on implementing Court judgments and draw this to Parliament’s attention. The Government is to be congratulated on the swift implementation of a number of recent judgments, and on its recent successful efforts to bring to a conclusion a number of older cases which had been under supervision by the Committee of Ministers for a long time.

2.13 However, there is a relatively small number of cases in relation to which there have been unacceptable delays in implementation, which we consider in chapter 3.

3 Insufficient progress towards implementation

The three areas of concern

3.1 There are three broad categories of case in which insufficient progress is being made towards implementation of judgments of the European Court of Human Rights:

- The group of historic cases from Northern Ireland concerning the inadequacy of the investigation of the use of lethal force by State agents (the so-called “McKerr Group”, which comprises six cases: *McKerr*, *Jordan*, *McShane*, *Shanaghan*, *Kelly and Finucane*).
- The non-implementation in Northern Ireland of certain judgments which have been implemented in the rest of the UK.
- The failure to amend the law in response to the Court’s finding of a violation in relation to the UK’s ban on prisoner voting (*Hirst and Greens and MT*).

Inadequate investigations into deaths in Northern Ireland

3.2 The *McKerr* group of cases concern the adequacy of investigations into deaths in the 1980s and 1990s in Northern Ireland, either in security force operations, or in circumstances giving rise to suspicions of collusion with the security forces. The Court in these cases found a number of violations of the procedural obligation under article 2 ECHR (the right to life) to conduct an effective investigation into such deaths, including lack of independence of investigating police officers; lack of public scrutiny and information to victims’ families on reasons for decisions not to prosecute; defects in the police investigations; limitations on the role and scope of the inquest procedure; absence of legal aid for the representation of the victims’ families; and delays in inquest proceedings.

3.3 The Government has adopted a number of general measures to give effect to these judgments, including reforms to the inquest procedure in Northern Ireland and the establishment of bodies to carry out investigations, including the Police Ombudsman of Northern Ireland and the Historical Enquiries Team (“HET”). The Committee of Ministers closed its supervision of a number of implementation issues as a result of these measures, but a number of outstanding issues remain, including ongoing concerns about defects in the investigations, such as the lack of independence of police investigators. The failure to implement the judgments in full is now giving rise to new cases about investigative delay which are also reaching the European Court of Human Rights, resulting in new findings of violations against the UK.²³

3.4 The effective investigation of cases which are the legacy of “the Troubles” in Northern Ireland has proved a particularly intractable problem in practice because it is so intimately bound up with the much larger question of dealing with the past in a post-conflict society. The processes established to provide the effective investigations which Article 2 ECHR

²³ See e.g. *Hemsworth and McCaughey v UK* (judgment of 16 October 2013), in which the European Court found that excessive delays in the investigation of deaths in Northern Ireland constituted a breach of the UK’s obligation under Article 2 ECHR to ensure the effectiveness of investigations into suspicious deaths.

requires, through the institutions of the Police Ombudsman and the HET, have been beset with difficulties and have also been the subject of critical independent reviews which have called into question their compliance with the requirements of Article 2. Investigations through these processes have been subject to extensive delays, as have the so-called “legacy inquests”.

3.5 The Stormont House Agreement, concluded in December 2014, contains a number of provisions about dealing with the past in Northern Ireland which are of potential relevance to the resolution of these outstanding judgments. There is agreement that any approach to dealing with the past must comply with certain principles, including upholding the rule of law, facilitating the pursuit of justice and information recovery, and human rights compliance.²⁴ Most significantly, there is agreement on a single comprehensive mechanism, the “Historical Investigations Unit”, to take forward outstanding cases from the HET process and the legacy work of the Police Ombudsman.²⁵ There is also agreement that “the Executive will take appropriate steps to improve the way the legacy inquest function is conducted to comply with ECHR Article 2 requirements.” The UK Government also makes clear in the Agreement that “it will make full disclosure to the HIU,²⁶ and the HIU is to aim to complete its work within five years.²⁷

3.6 We welcome the relevant provisions in the Stormont House Agreement as a potentially significant breakthrough in relation to these long-delayed cases of non-implementation. However, the issues are complex and their resolution will depend on the detailed implementation of the very general indications contained in the Stormont House Agreement. The Agreement does not specify a timeframe within which the new Historical Investigations Unit is to be established. The Chief Constable of Northern Ireland has said that he expects it to be two years before the new Unit is ready to start work.²⁸

3.7 We are particularly concerned by the prospect that it may be two years before the new Historical Investigations Unit starts its work, especially as in the meantime the work of the Historical Enquiries Team is going to be carried on by the smaller Legacy Investigations Branch of the PSNI. As well as having fewer resources at its disposal than its predecessor, the Legacy Investigations Branch cannot itself satisfy the requirements of Article 2 ECHR because of its lack of independence from the police service. We recommend that the legislation establishing the Historical Investigations Unit be treated as an urgent priority by the new Government and every effort made to ensure that the new Unit is up and running well before the two years anticipated by the Chief Constable. We also recommend that the arbitrary limit of 5 years for the life of the HIU is not necessarily consistent with Art 2 ECHR as investigation of the hundreds of outstanding cases may well take longer than the 5 years allocated.

3.8 We also recommend that the parties to the Agreement publish a more detailed plan for implementation of the relevant provisions of the Agreement, with clear target dates for the different elements, more specifics about how the delays in legacy inquests will be

24 Stormont House Agreement, para. 21.

25 *Ibid* para. 30.

26 *Ibid* para. 37.

27 *Ibid* para. 40.

28 <http://www.bbc.co.uk/news/uk-northern-ireland-31082500> (1 February 2015).

overcome, and more detail about precisely how the additional £150million over five years will be allocated, including whether any additional resources will be made available to coroners in Northern Ireland, and what proportion of those monies will be allocated to the HIU.

Lack of implementation in devolved jurisdictions, especially Northern Ireland

3.9 It has become increasingly clear during the course of this Parliament that one of the reasons for insufficient progress being made towards the implementation of certain judgments against the UK has been delays in implementation in one of the devolved jurisdictions. While one such case concerned Wales,²⁹ the problem has mainly arisen in relation to Northern Ireland.

3.10 We are aware of three cases in particular in which full implementation of a judgment against the UK has been delayed because the judgment has been implemented in the rest of the UK but not in Northern Ireland: *Marper* concerning the retention of DNA; *MM* concerning the indefinite retention and disclosure of police caution data; and *MH* concerning the ability of a person lacking legal capacity to challenge the legality of their detention under mental health legislation.

3.11 The most serious delay concerns the implementation of the 2008 judgment in *Marper* concerning the retention of DNA profiles and cellular samples. The legislative response to this judgment in England and Wales was primarily contained in the Protection of Freedoms Act 2012, which was brought into force on 31 October 2013 and broadly adopted the model already provided for in legislation of the Scottish Parliament. We scrutinised the relevant provisions of the Bill carefully against the judgment of the European Court of Human Rights in *Marper* in our legislative scrutiny Report on the Protection of Freedoms Bill.³⁰ Although we had some concerns on points of detail, we welcomed the provisions in the Bill as creating a less intrusive and more proportionate legal regime for the retention of biometric material than the provisions of the Crime and Security Act 2010, the previous Government's response to the *Marper* judgment of which our predecessor Committee in the last Parliament was very critical.³¹ We accepted that legislation was not required in Scotland, where the legal framework for the retention of biometric material already contained sufficient safeguards to make it compatible with the right to respect for private life in the ECHR.

3.12 The judgment has still not been implemented, however, in Northern Ireland, more than six years after it was handed down by the Court.³² The reasons for this are set out in detail in the Government's most recent updated action plan submitted to the Committee of Ministers in January 2015.³³ It is a lengthy and complex story of delay by and poor co-ordination between the UK Government and the devolved Government following the

29 *Buckland v UK*, in which the issue was eventually resolved.

30 *Legislative Scrutiny: Protection of Freedoms Bill*, Eighteenth Report of Session 2010–12, HL Paper 195/HC 1490, paras 6–87.

31 Twelfth Report of Session 2009–10, *Legislative Scrutiny: Crime and Security Bill, etc.* HL Paper 67/HC 402, paras. 1.8–1.10.

32 The judgment became final on 4 December 2008.

33 <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2668885&SecMode=1&DocId=2223956&Usage=2>

devolution of policing and justice in 2010. Further amendments to devolved legislation are still required, and are contained in a Bill which is currently before the Northern Ireland Assembly. It is now expected that the relevant provisions will be ready for commencement on 31 October 2015.

3.13 We welcome the fact that arrangements for the implementation of the *Marper* judgment in Northern Ireland are in train and should finally be in place by November this year. However, it will by then be almost seven years from the date of the judgment by the European Court of Human Rights in *Marper*, which has resulted in people in Northern Ireland being deprived of the benefit of the judgment for very much longer than those living in the rest of the UK. In our view a delay of nearly seven years in the full implementation of a European Court of Human Rights judgment across the whole of the UK is unacceptable.

3.14 During our recent visit to Northern Ireland we heard from a number of different sources that the delay in this case was symptomatic of a more general impasse in relation to human rights as a result of political deadlock within the governing institutions. **It has not been possible for us to ascertain exactly where culpability lies for such unacceptable delay, but we recommend that the UK Government and the Northern Ireland Executive consider what lessons are to be learned from the delay, with a view to avoiding it being repeated in the future. While the delays in implementation in the other two cases of *MM* and *MH* are much less serious, they suggest that there is a systemic problem with implementation in Northern Ireland that urgently needs addressing.**

Failure to amend the law concerning prisoner voting

3.15 As the Government's report on human rights judgments makes clear, the vast majority of applications against the UK which were pending before the European Court of Human Rights at the end of last year concerned prisoner voting: as of 17 November 2014, of the 1,171 applications against the UK which had been deemed to raise arguable complaints, and therefore allocated to a judicial formation, 1,025 of them were prisoner voting cases.

3.16 In *Hirst v UK*, the Grand Chamber held that the UK's statutory ban on all convicted prisoners voting was disproportionate and therefore in breach of the right to vote in Article 3 Protocol 1. In the subsequent case of *Greens and M.T. v UK*, the Court further indicated that some legislative amendment would be required in order to render the UK's electoral law compatible with the requirements of the Convention. The Government failed in its attempt to persuade the Grand Chamber of the European Court of Human Rights to reverse its 2005 decision in *Hirst v UK*. In *Scoppola v Italy*, in which the UK intervened, the Grand Chamber upheld its decision in *Hirst*.

3.17 In the wake of that decision, the European Court of Human Rights "unfroze" the other applications pending against the UK concerning prisoner voting. More than 1,000 such applications were declared inadmissible or struck out by the Court. That left 1,025 outstanding applications by prisoners against the UK complaining variously that they were automatically prevented from voting in a number of elections; to the European Parliament in 2009, to Parliament in 2010, and to the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly in 2011.

3.18 The Court has now decided all of those outstanding cases.³⁴ It found a violation of the right to vote in all 1,025 cases: “given that the impugned legislation remains unamended, the Court cannot but conclude that, as in *Hirst (no. 2)* and *Greens and M.T.* and for the same reasons, there has been a violation of Article 3 of Protocol No. 1.”³⁵ However, the Court declined to award either damages or costs to the applicants, concluding that the finding of a violation constitutes sufficient just satisfaction for them, and that the legal costs claimed could not be regarded as reasonably and necessarily incurred, since the lodging of an application in repeat violation cases was straightforward and did not require legal assistance.³⁶

3.19 The Joint Committee on the Draft Prisoner Voting Bill, which scrutinised the Government’s draft bill setting out three legislative options, concluded that the UK is under a binding legal obligation under Article 46 of the European Convention on Human Rights to legislate to remove the current statutory prohibition on prisoner voting and replace it with a more tailored restriction. After considering detailed evidence about the possible justifications for a variety of restrictions on prisoners’ right to vote, the Committee recommended that legislation be brought forward, before the General Election, to enfranchise those prisoners sentenced to imprisonment of 12 months or less and others in the final 6 months of their sentence prior to release. The Government has not formally responded to the Joint Committee’s Report. In its report on human rights judgments the Government says it is considering the Report “but will not be able to legislate for prisoner voting in this Parliament.”

3.20 We note the view expressed by Lady Hale in the recent Supreme Court case concerning prisoner voting, that since “by definition, parliamentarians do not represent the disenfranchised, the usual respect which the courts accord to a recent and carefully considered balancing of individual rights and community interests [...] may not be appropriate.”³⁷ In our view, however, it is highly likely that, if Parliament were to legislate to give effect to the recommendation of the Joint Committee on the Draft Prisoner Voting Bill, the Committee of Ministers would accept that the UK had done enough to implement the outstanding judgments against the UK, and the Court in any future challenge would also uphold the new law as being a proportionate interference with prisoners’ right to vote. The Grand Chamber in the case of *Scoppola* reiterated the very wide “margin of appreciation” that national parliaments enjoy when deciding how to regulate prisoner voting, and in the light of recent Strasbourg case-law on the margin of appreciation, which is paying closer attention to the reasoned consideration of national parliaments, in our view the scrutiny and deliberation of the issues by the Joint Committee on the Draft Prisoner Voting Bill, along with the parliamentary debates on the new law informed by the Joint Committee’s Report, would weigh heavily with the Court when deciding whether or not the new law is within the UK’s margin of appreciation.

3.21 The General Election in May this year will inevitably give rise to more applications against the UK which will eventually succeed in Strasbourg. Although the Court in *Firth and McHugh v UK* did not award damages, it cannot be assumed that this will continue to

34 *Firth and others v UK* (Application no. 47784/09 and nine others), judgment final on 15 December 2014; *McHugh and others v UK* (Application no. 51987/08 and 1,014 others), judgment 10 February 2015.

35 *Firth*, para. 15; *McHugh*, para. 11.

36 *Firth*, paras 18 and 21–22; *McHugh*, para. 17.

37 *Chester and McGeoch*, [2013] UKSC 63, para. [90] (Lady Hale, with whom Lord Hope and Lord Kerr agreed).

be the Court's stance in future cases if the UK continues to keep in place the law that was found to be disproportionate in 2005. It is now too late in the life of this Parliament for the Government to make the necessary legislative changes, whether by way of primary legislation or remedial order, to give effect to the Joint Committee's recommendation, even if it had the will to do so. However, the matter will continue to be pressing in the new Parliament: the elections to the devolved legislatures in 2016 will also give rise to another batch of applications to which the UK will have no defence in Strasbourg.

3.22 Judgments of the European Court of Human Rights are not merely advisory. States are under a binding legal obligation to implement them, an obligation voluntarily assumed by the UK when it agreed to Article 46(1) of the European Convention on Human Rights. Compliance with the judgments of the Court concerning prisoner voting is therefore a matter of compliance with the rule of law. The UK enjoys a hard-earned international reputation as a State which values and exemplifies a commitment to the rule of law. That reputation underpins much of its power and influence over the behaviour of other States. As the Minister of State at the Foreign Office, Baroness Anelay of St. Johns, recently said in a written answer to a Parliamentary Question:

“The UK plays an active role in the Committee of Ministers, and has regularly used this forum to press Russia to comply with Court rulings, in line with its international human rights obligations.”³⁸

3.23 Russia is currently the source of the highest number of applications to the Court and has one of the worst records for implementing judgments of the Court. The UK Government's continuing failure to amend the law in response to the *Hirst* judgment undermines its credibility when invoking the rule of law to pressurise Russia—and other countries in a similar position—to comply with its international human rights obligations.

3.24 Insofar as the Government has given any reasons for its failure to date to provide a substantive response to the Report of the Joint Committee on the Draft Prisoner Voting Bill, it has suggested that “this is not a straightforward issue” and that the Joint Committee's Report recommends new options for implementation which require careful consideration. In fact, implementation of the Joint Committee's recommendations would be very straightforward, requiring only a one-clause Bill amending s. 3 of the Representation of the People Act 1983 by replacing its current disenfranchisement of serving prisoners with the following modified disqualification:

- (1) A prisoner serving a custodial sentence for a term of more than 12 months is disqualified from voting at a parliamentary or local government election.
- (2) The disqualification in sub-section (1) shall cease to apply 6 months before the prisoner's scheduled date of release.

3.25 Such a legislative amendment would also remove the incompatibility that currently exists in relation to the franchise for elections to the European Parliament and the devolved

legislatures in the UK, because the laws defining entitlement to vote in those elections incorporate the disqualification in s. 3 of the 1983 Act.³⁹

3.26 We recommend that the next Government introduce legislation (whether primary legislation or remedial order) at the earliest opportunity in the new Parliament to give effect to the recommendation of the Joint Committee on the Draft Prisoner Voting Bill, in order to prevent further waves of repetitive applications, to avert the risk of the UK eventually becoming liable for damages in such cases but, above all, to demonstrate the UK's continuing commitment to the principle of the rule of law. We recommend that the legislation be included in the first Queen's Speech of the new Parliament and the Bill or remedial order itself introduced before the Committee of Ministers resumes its consideration of the UK's implementation of the outstanding judgments on prisoner voting in September 2015.

Other outstanding issues

Whole life tariffs

3.27 We considered the UK's response to the judgment of the European Court of Human Rights in *Vinter v UK* that a prisoner who is sentenced to a "whole life tariff" must have an opportunity to have that tariff reviewed, in order to ascertain whether it continues to be justified, in our scrutiny report on the Criminal Justice and Courts Bill.⁴⁰

3.28 We concluded that an amendment of the current law is necessary in order to comply fully with the judgment, and we recommended an amendment to the Criminal Justice and Courts Bill which would have largely reinstated the position which used to obtain in UK law, whereby a prisoner serving a whole life tariff is entitled after 25 years to ask for a review of the continued justification for that tariff. Our recommended amendment was debated in the House of Lords and attracted widespread cross-party support, including from a number of senior lawyers and retired judges. The Government, however, maintained that the law is clear following the judgment of the Court of Appeal in the case of *McLoughlin*, and that no further general measures are necessary to give effect to the judgment in *Vinter*.

3.29 In *Hutchinson v UK* the European Court of Human Rights has now agreed with the Government's view.⁴¹ The Court considered that the Court of Appeal in *McLoughlin* had now specifically addressed the doubts expressed by the Strasbourg Court about the clarity of domestic law in *Vinter*, and set out an unequivocal statement of the legal position, and in those circumstances the Court held that it must accept the national court's interpretation of domestic law. It ruled that there was no violation of Article 3 ECHR because the power to release under s. 30 of the 2003 Act, exercised in the manner set out in the Court of Appeal's judgment, is sufficient to comply with the requirements of Article 3.

39 European Parliamentary Elections Act 2002, s. 8; Scotland Act 1998, s. 11(1); Government of Wales Act 2006, s. 12; Northern Ireland Act 1998.

40 Fourteenth Report of Session 2013–14, *Legislative Scrutiny: Criminal Justice and Courts Bill*, HL Paper 189/HC 1293, paras 1.16–1.30.

41 *Hutchinson v UK* (Application no. 57592/08) (judgment of 3 February 2015). The judgment is a Chamber judgment and therefore does not become final until the possibility of referral to the Grand Chamber has been resolved: see ECHR Article 44(2).

3.30 We note, however, that the Government has not yet amended either the Prison Service Instruction or the Lifer Manual to reflect the effect of the judgment in *McLoughlin*. **We recommend that the Government bring forward at the earliest opportunity the amendments to those two documents which are necessary in order to make clear to a person who is the subject of a whole life order that they can apply to the Secretary of State for discretionary release under s. 30 of the 2003 Act. The revisions should make clear that an application can be made on the ground that “exceptional circumstances” had arisen subsequent to the imposition of the sentence, and that, when considering such an application, the Secretary of State must consider all the relevant circumstances and decide whether release is justified on compassionate grounds.**

“No win, no fee agreements” in privacy and defamation cases

3.31 We considered the Government’s response to the Court’s judgment in *MGN v UK* in our legislative scrutiny Report on the Legal Aid, Sentencing and Punishment of Offenders Bill in 2012. The Court found a breach of Mirror Group Newspapers’ right to freedom of expression in Article 10 ECHR as a result of the costs rules which had led to Naomi Campbell recovering more than £1 million in costs in proceedings in which she recovered just £3,500 in damages from the newspaper. The Government responded by legislating to change the rules on conditional fee agreements, so that the losing party is no longer liable to pay the winning party’s success fee or “after the event” insurance premium.

3.32 In our scrutiny Report on the Bill we were concerned that the Government’s response to the *MGN* judgment went too far, and that by removing the recoverability of success fees and insurance premiums altogether this could have a negative impact on effective access to justice in defamation and privacy cases for people who would not otherwise be able to afford to bring such proceedings. In his Report on the Press, Lord Justice Leveson shared these concerns and recommended that the reforms to no win no fee agreements not be brought into force in privacy and defamation actions until a regime of costs protection was in place. The Government consulted on such a costs protection regime in November 2013 but has still not decided how to proceed. The *MGN* judgment has therefore still not been implemented.

3.33 We welcome the Government’s acceptance of Lord Justice Leveson’s recommendation that the changes to conditional fee agreements not be brought into force for privacy and defamation cases until other protections are in place to ensure effective access to justice for people of modest means. In the meantime, however, the Strasbourg judgment remains unimplemented, which may be prolonging the chilling effect on freedom of expression. We recommend that the new Government treat this particular aspect of the Leveson recommendations as an early legislative priority.

4 Declarations of Incompatibility by UK courts

The statistics

4.1 The number of declarations of incompatibility made by UK courts under the Human Rights Act has also diminished significantly over the course of this Parliament. Since the Human Rights Act came into force on 2 October 2000, UK courts have made 29 declarations of incompatibility, of which 20 have become final. During the 2010–2015 Parliament, however, only three declarations of incompatibility have been made, and one of those is still subject to appeal.

4.2 We draw to Parliament’s attention the strikingly small number of declarations of incompatibility made by UK courts under the Human Rights Act during the lifetime of this Parliament, which confirms the significant downward trend in the number of such declarations since the Human Rights Act came into force in 2000.

Declarations of incompatibility during the 2010-2015 Parliament

The right to a fair hearing before the Independent Safeguarding Authority

4.3 We scrutinised the Government’s response to the first declaration of incompatibility made during this Parliament in our Report on the Protection of Freedoms Bill.⁴² The declaration concerned a Convention incompatibility in the legal framework on safeguarding vulnerable groups identified by the High Court in the case of *Royal College of Nursing v Secretary of State for the Home Department*.⁴³ The court in that case declared the relevant provisions of the Safeguarding Vulnerable Groups Act 2006⁴⁴ to be incompatible with the right to a fair hearing and the right to respect for private life to the extent that they provide that individuals’ representations are not considered before their names are included by the Independent Safeguarding Authority on the barred list. The Act provided for such representations to be made only after the individual has been included on the list.

4.4 The Protection of Freedoms Act amended the provisions of the Safeguarding Vulnerable Groups Act 2006 which provide for a person’s inclusion on the children’s or adults’ barred list subject to consideration of representations, by requiring the Independent Safeguarding Authority to give the person the opportunity to make representations as to why they should not be included in the barred list, before they are so included. We welcomed the amendment which in our view remedied the incompatibility identified in the court’s declaration of incompatibility in the *Royal College of Nursing* case.

Disclosure of convictions and cautions

4.5 The second declaration of incompatibility made during this Parliament concerned the legal framework for the disclosure of convictions and cautions. The Court of Appeal

42 Eighteenth Report of Session 2010–12, *Legislative Scrutiny: Protection of Freedoms Bill*, HL Paper 195/HC 1490, paras 142–143.

43 [2010] EWHC 2761 (Admin).

44 Paragraphs 2 and 8 of Schedule 3 to the Act.

declared the relevant provisions of the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to be incompatible with the right to respect for private life in Article 8 ECHR on the grounds that blanket disclosure of all cautions and convictions is disproportionate.⁴⁵ On appeal, the Supreme Court substantially upheld the declaration of incompatibility in respect of the Police Act 1997.

4.6 The Government's response to the declaration of incompatibility made by the Court of Appeal was to make changes to the Exceptions Order by way of secondary legislation, so that some spent convictions and cautions would not need to be disclosed.⁴⁶ We regret that the relevant secondary legislation making the amendments was not drawn to our attention by the Government at the time of its introduction and we therefore did not have the opportunity to scrutinise it and to report to Parliament on whether in our view it remedied the incompatibility with the Convention which had been identified by the Court of Appeal.

4.7 We do not have the resources to monitor all statutory instruments which are laid before Parliament and we are therefore dependent on the Government to draw to our attention any statutory instruments which have significant human rights implications. A statutory instrument which is designed to remedy an incompatibility with a Convention right which has been identified by a Court is clearly such an instrument. Indeed, if such changes are made by way of a remedial order under the Human Rights Act, we are the Committee charged with scrutinising such an instrument and our Standing Orders prescribe a strict timetable which requires us to prioritise such work over all our other work. **We are therefore concerned by the fact that the secondary legislation designed to respond to this declaration of incompatibility was not drawn to our attention by the Government. We recommend that in future the Government *always* draws such instruments to the attention of this Committee, to ensure that Parliament receives the advice of its expert human rights committee about whether the instrument remedies the incompatibility identified by the courts.**

4.8 We note that the case of *MM v UK*, which concerned very similar questions about the adequacy of the legal framework for the disclosure of criminal records in Northern Ireland, is still under supervision by the Committee of Ministers,⁴⁷ and that cases concerning the retention of data about individuals by the police continue to reach the Supreme Court.⁴⁸ We expect that the compatibility with the right to respect for private life of the legal framework for the retention and disclosure of criminal record information and other personal data held by the police, in the light of recent and forthcoming judgments of the European Court of Human Rights and the UK Supreme Court, will continue to be an issue for our successor Committee in the new Parliament.

Retrospective fast-track legislation

4.9 The third and last declaration of incompatibility during the current Parliament concerned the Jobseekers (Back to Work Schemes) Act 2013. The Act reversed a judgment

45 *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* [2013] EWCA Civ 25.

46 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

47 See above, para. 3.10.

48 See e.g. *R (Catt) v Commissioner of Police of the Metropolis* and *R (T) v Commissioner of Police of the Metropolis* [2015] UKSC 15 (4 March 2015).

of the Court of Appeal which had quashed certain “Back to Work Schemes” Regulations on the grounds that they were outside the scope of the statutory power to make such regulations. The effect of the Act was retrospectively to validate the regulations which had been quashed, while the Government’s appeal against the Court of Appeal’s judgment was still pending before the Supreme Court. The High Court declared the Act to be incompatible with the right of access to court in Article 6(1) ECHR.⁴⁹

4.10 The declaration of incompatibility is not yet final because the Government has appealed against the judgment to the Court of Appeal. We do not report on declarations of incompatibility until they have become final and we therefore do not deal with this judgment in this Report; that will be a matter for our successor Committee in the new Parliament if the declaration becomes final. However, we do draw to Parliament’s attention in the meantime the fact that the fast-track nature of the legislation deprived us of an opportunity to report on the Bill as it passed through Parliament.

4.11 The Bill was introduced in the House of Commons on 14 March 2013 and completed all its stages in both Houses on 25 March. As we pointed out in an earlier Report reviewing some of the lessons to be learned about legislative scrutiny for human rights compatibility during this Parliament,⁵⁰ this did not afford us the opportunity to report to Parliament. However, we did express in correspondence with the Minister serious concerns about the compatibility of the Bill with the ECHR, including with the right of access to a court and to a fair hearing in Article 6 ECHR: the very grounds on which the High Court subsequently held the Act to be incompatible with the Convention.⁵¹ **We draw this correspondence to Parliament’s attention, and to the attention of our successor Committee in the event that the declaration of incompatibility becomes final.**

Implementation of earlier declarations of incompatibility

4.12 As we pointed out in chapter 1 above, during this Parliament we have also scrutinised and reported on two remedial orders the purpose of which was to remedy Convention incompatibilities identified in declarations of incompatibility made by UK courts during the last Parliament: those concerning the statutory scheme requiring those subject to immigration control to obtain permission to marry, and the lack of an opportunity for independent review of indefinite sex offender notification requirements.⁵²

4.13 There is therefore only one outstanding declaration of incompatibility where the Government has yet to remedy the incompatibility: that concerning the statutory disqualification of serving prisoners from voting in parliamentary elections.⁵³ That declaration was made more than eight years ago. We have dealt with the issue in chapter 3 above. The simple statutory amendment that we recommended there, to give effect to the

49 *R (on the application of Reilly (no. 2) and Hewstone) v Secretary of State for Work and Pensions* [2014] EWHC 2182.

50 Ninth Report of Session 2012–13, *Legislative Scrutiny Update*, HL Paper 157/HC 1077, paras 33–39.

51 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/legislative-scrutiny-2012-13/jobseekers-back-to-work-scheme-bill/>

52 See above para . 1.7.

53 *Smith v Scott* [2007] CSIH 9. The Supreme Court in *Chester and McGeoch* applied the principles established in the judgments of the European Court of Human Rights in *Hirst (no. 2)* and *Scoppola (no. 3)*, and therefore upheld the European Court’s position that the current UK law is incompatible with the Convention, but declined to make a further declaration of incompatibility.

recommendations of the Joint Committee on the Draft Prisoner Voting Bill, would remedy the incompatibility identified in the declaration of incompatibility.

5 Reform of the European Court of Human Rights

The ongoing reform process

5.1 The Government's Report to us on its response to human rights judgments includes a short section on reform of the European Court of Human Rights. It draws particular attention to the Brighton Declaration on the Future of the European Court of Human Rights, which was adopted in April 2012 and was the culmination of the UK's chairmanship of the Committee of Ministers of the Council of Europe. Protocol 15 to the ECHR, which the Government is in the process of ratifying, gives effect to the amendments to the Convention which were agreed in the Brighton Declaration. The longer term future of both the European Court of Human Rights and the ECHR more generally is still under consideration by the expert bodies of the Council of Europe with a view to a Report being published by December 2015.

The reduction in the backlog

5.2 Since the Brighton Declaration, the Court has succeeded in significantly reducing the very considerable backlog of cases that it was facing by implementing a number of changes to the way in which it handles applications.⁵⁴ The Court is to be congratulated on making such dramatic progress in reducing the backlog of cases, which it is widely acknowledged was beginning to undermine its credibility. **We are aware of concerns expressed by some about whether some of these procedural changes to reduce the backlog are preventing meritorious cases from reaching the Court, but we have not had the capacity during this Parliament to carry out our own assessment of whether these concerns are well-founded. It is therefore a matter which we draw to the attention of our successor Committee.**

Increasing parliamentary involvement

5.3 Like our predecessor Committee,⁵⁵ we believe that enhancing the role of national parliaments in the ECHR system is the key to addressing concerns and anxieties about the democratic legitimacy of the Convention and the Court and thereby ensuring their long term survival. We are pleased to see that awareness of this appears to be spreading. It is acknowledged, for example, by the Director General of the Council of Europe's Directorate General on the Rule of Law and Human Rights in his Introduction to the Committee of Ministers annual Report on the Execution of Judgments for 2013.

5.4 In our recent Report on Protocol 15, we drew Parliament's attention to the potential significance of adding express references to the principle of "subsidiarity" and the doctrine of the "margin of appreciation" in the Preamble to the Convention. We explained that this signifies a new emphasis on the primary responsibility of the Member States of the Council of Europe to secure the rights and freedoms set out in the Convention. That new emphasis on national implementation casts a greater onus on Government departments to conduct

54 See the Court's Annual Report 2014, above fn. 23.

55 Fifteenth Report of Session 2009–10, *Enhancing Parliament's role in relation to human rights judgments*, HL Paper 85/HC 455.

detailed assessments of the Convention compatibility of their laws and policies and on Parliament to subject the Government's assessment to careful scrutiny and debate. Where the national authorities can demonstrate that they have conscientiously engaged in such a detailed and reasoned consideration of Convention compatibility, the Court will be more reluctant to interfere with that reasoned assessment.

5.5 We welcome and draw to Parliament's attention the fact that in the ongoing process of reform of the European Court of Human Rights, increasing prominence is gradually being given to the importance of the role of national parliaments in the ECHR system, including in scrutinising the implementation of Court judgments and in scrutinising the Convention compatibility of laws and policies. As our predecessor Committee observed, the relatively strong institutional mechanisms and practices that have been developed in this country place the UK Government in a good position to provide strong leadership on this question in intergovernmental processes in the Council of Europe. We recommend that in the ongoing process about the longer term future of the Court and the Convention, the Government becomes a champion of increasing parliamentary involvement in the ECHR system, beginning with the forthcoming Brussels Declaration on "Our Shared Responsibility" for the Convention rights which will be adopted at the end of March.

6 Systemic issues

Background

6.1 Our predecessor Committee made a number of detailed recommendations aimed at overcoming a number of systemic obstacles which it had identified, both to effective parliamentary scrutiny of the Government's response to court judgments concerning human rights, and to full and timely responses to those judgments.⁵⁶ We have reviewed those recommendations and the Government's response to them for the purposes of preparing this Report and, with the exception of the three categories of case considered in chapter 3 above, **we are pleased to be able to report that the Government's systems for responding promptly and fully to Court judgments concerning human rights are generally working well.**

Co-ordination and provision of information

6.2 From our perspective, the Ministry of Justice appears to be an effective co-ordinator of responses to judgments from other Government departments, and liaises effectively and efficiently with the Foreign Office in relation to responses to judgments of the European Court of Human Rights. We have found that our predecessor's Guidance for Departments on responding to court judgments, which we adopted at the beginning of this Parliament, is generally complied with.

6.3 There has been a very significant improvement in the information provided to Parliament about human rights judgments, which is the crucial first step to facilitating effective parliamentary scrutiny. The Foreign Office notify us of Strasbourg Court judgments, while departments notify us of any declarations of incompatibility in their area of departmental responsibility. More could perhaps be done to ensure that we are always provided with a copy of an action plan, or updated action plan, as soon as it has been submitted to the Committee of Ministers, as there is inevitably a delay before the plan is posted on the Committee of Minister's website.

6.4 Action plans and action reports should also always include reference to any relevant scrutiny of the Government's response at national level, for example by our Committee or other relevant bodies such the Independent Reviewer of Terrorism Legislation or national human rights institutions such as the EHRC or the Children's Commissioners. This has not always been the case during this Parliament and we have had occasion to draw to the attention of the Committee of Ministers reports by us or others which are relevant to their supervision of the Government's response to a judgment but have not been mentioned in the Government's own action plans or reports.

The Government's annual report on responses to human rights judgments

6.5 **We commend the Government in particular for the annual report that the Ministry of Justice has been publishing throughout the Parliament.** The report is informative for parliamentarians generally and has been of considerable assistance to us and our staff when

⁵⁶ *Enhancing Parliament's Role, chapter 6.*

scrutinising the Government's responses to judgments. We have found it helpful for the report to include a general introductory section dealing with significant developments in the field of human rights, as this helps parliamentarians to situate court judgments about human rights in the wider context of the UK's human rights obligations under a variety of international treaties.

6.6 We also welcome the fact that the report has begun to include details of judgments of the Court in cases against the UK in which there has been found to be no violation of the Convention. This is helpful because it brings to the attention of parliamentarians the sorts of cases in which Convention compatibility issues have been raised but the Court has upheld the law or policy in question as being compatible with the Convention.

6.7 There is scope, however, for the Government's annual report to be even more helpful in future, and we recommend some ways in which to develop the Government's report in the next Parliament. We recommend that future reports include not merely declarations of incompatibility under s. 4 of the Human Rights Act, but judicial exercises of the power in s. 3 of the Human Rights Act, to interpret legislation compatibly with Convention Rights. We also recommend that the report include significant judgments against other States which may have implications for UK law (this is already done, for example, in the Netherlands and Germany).

6.8 Finally, we recommend that the Government's annual report to our Committee on *Responding to human rights judgments* should be turned into an "Annual Human Rights Report" to Parliament. The growing introductory section on "Wider developments in human rights", which takes in the UK's reporting to UN human rights monitoring bodies as well as responses to court judgments, could usefully be expanded in future to make the report a more general report, akin to the Foreign Office's annual report to the Foreign Affairs Committee on Human Rights, but focusing on human rights in the UK. Such a report could then usefully form the basis of the annual appearance of the Human Rights Minister before this Committee.

Conclusions and recommendations

Judgments of the European Court of Human Rights

1. In this Report we seek to present dispassionately the factual context in which political debates about the European Court of Human Rights should take place, by analysing closely the latest available statistics. (Paragraph 2.5)
2. We draw Parliament's attention to the significant downward trend in the number of judgments of the European Court of Human Rights which have found the UK to be in breach of the ECHR. We also draw to Parliament's attention the wide discrepancy between some of the media coverage of the statistics about judgments of the European Court of Human Rights and the facts as contained in the statistics themselves. (Paragraph 2.8)
3. We commend the Government for its generally very good record on implementing Court judgments and draw this to Parliament's attention. The Government is to be congratulated on the swift implementation of a number of recent judgments, and on its recent successful efforts to bring to a conclusion a number of older cases which had been under supervision by the Committee of Ministers for a long time. (Paragraph 2.12)

Insufficient progress towards implementation

4. We welcome the relevant provisions in the Stormont House Agreement as a potentially significant breakthrough in relation to these long-delayed cases of non-implementation. However, the issues are complex and their resolution will depend on the detailed implementation of the very general indications contained in the Stormont House Agreement. (Paragraph 3.6)
5. We are particularly concerned by the prospect that it may be two years before the new Historical Investigations Unit starts its work, especially as in the meantime the work of the Historical Enquiries Team is going to be carried on by the smaller Legacy Investigations Branch of the PSNI. As well as having fewer resources at its disposal than its predecessor, the Legacy Investigations Branch cannot itself satisfy the requirements of Article 2 ECHR because of its lack of independence from the police service. We recommend that the legislation establishing the Historical Investigations Unit be treated as an urgent priority by the new Government and every effort made to ensure that the new Unit is up and running well before the two years anticipated by the Chief Constable. We also recommend that the arbitrary limit of 5 years for the life of the HIU is not necessarily consistent with Art 2 ECHR as investigation of the hundreds of outstanding cases may well take longer than the 5 years allocated. (Paragraph 3.7)
6. We also recommend that the parties to the Agreement publish a more detailed plan for implementation of the relevant provisions of the Agreement, with clear target dates for the different elements, more specifics about how the delays in legacy inquests will be overcome, and more detail about precisely how the additional

£150million over five years will be allocated, including whether any additional resources will be made available to coroners in Northern Ireland, and what proportion of those monies will be allocated to the HIU. (Paragraph 3.8)

7. We welcome the fact that arrangements for the implementation of the Marper judgment in Northern Ireland are in train and should finally be in place by November this year. However, it will by then be almost seven years from the date of the judgment by the European Court of Human Rights in Marper, which has resulted in people in Northern Ireland being deprived of the benefit of the judgment for very much longer than those living in the rest of the UK. In our view a delay of nearly seven years in the full implementation of a European Court of Human Rights judgment across the whole of the UK is unacceptable. (Paragraph 3.13)
8. It has not been possible for us to ascertain exactly where culpability lies for such unacceptable delay, but we recommend that the UK Government and the Northern Ireland Executive consider what lessons are to be learned from the delay, with a view to avoiding it being repeated in the future. While the delays in implementation in the other two cases of MM and MH are much less serious, they suggest that there is a systemic problem with implementation in Northern Ireland that urgently needs addressing. (Paragraph 3.14)
9. Judgments of the European Court of Human Rights are not merely advisory. States are under a binding legal obligation to implement them, an obligation voluntarily assumed by the UK when it agreed to Article 46(1) of the European Convention on Human Rights. Compliance with the judgments of the Court concerning prisoner voting is therefore a matter of compliance with the rule of law. (Paragraph 3.22)
10. The UK Government's continuing failure to amend the law in response to the *Hirst* judgment undermines its credibility when invoking the rule of law to pressurise Russia—and other countries in a similar position—to comply with its international human rights obligations. (Paragraph 3.23)
11. We recommend that the next Government introduce legislation (whether primary legislation or remedial order) at the earliest opportunity in the new Parliament to give effect to the recommendation of the Joint Committee on the Draft Prisoner Voting Bill, in order to prevent further waves of repetitive applications, to avert the risk of the UK eventually becoming liable for damages in such cases but, above all, to demonstrate the UK's continuing commitment to the principle of the rule of law. We recommend that the legislation be included in the first Queen's Speech of the new Parliament and the Bill or remedial order itself introduced before the Committee of Ministers resumes its consideration of the UK's implementation of the outstanding judgments on prisoner voting in September 2015. (Paragraph 3.26)
12. We recommend that the Government bring forward at the earliest opportunity the amendments to those two documents which are necessary in order to make clear to a person who is the subject of a whole life order that they can apply to the Secretary of State for discretionary release under s. 30 of the 2003 Act. The revisions should make clear that an application can be made on the ground that "exceptional circumstances" had arisen subsequent to the imposition of the sentence, and that,

when considering such an application, the Secretary of State must consider all the relevant circumstances and decide whether release is justified on compassionate grounds. (Paragraph 3.30)

13. We welcome the Government's acceptance of Lord Justice Leveson's recommendation that the changes to conditional fee agreements not be brought into force for privacy and defamation cases until other protections are in place to ensure effective access to justice for people of modest means. In the meantime, however, the Strasbourg judgment remains unimplemented, which may be prolonging the chilling effect on freedom of expression. We recommend that the new Government treat this particular aspect of the Leveson recommendations as an early legislative priority. (Paragraph 3.33)

Declarations of Incompatibility by UK courts

14. We draw to Parliament's attention the strikingly small number of declarations of incompatibility made by UK courts under the Human Rights Act during the lifetime of this Parliament, which confirms the significant downward trend in the number of such declarations since the Human Rights Act came into force in 2000. (Paragraph 4.2)
15. We are therefore concerned by the fact that the secondary legislation designed to respond to this declaration of incompatibility was not drawn to our attention by the Government. We recommend that in future the Government *always* draws such instruments to the attention of this Committee, to ensure that Parliament receives the advice of its expert human rights committee about whether the instrument remedies the incompatibility identified by the courts. (Paragraph 4.7)
16. We draw this correspondence to Parliament's attention, and to the attention of our successor Committee in the event that the declaration of incompatibility becomes final. (Paragraph 4.11)

Reform of the European Court of Human Rights

17. We are aware of concerns expressed by some about whether some of these procedural changes to reduce the backlog are preventing meritorious cases from reaching the Court, but we have not had the capacity during this Parliament to carry out our own assessment of whether these concerns are well-founded. It is therefore a matter which we draw to the attention of our successor Committee. (Paragraph 5.2)
18. We welcome and draw to Parliament's attention the fact that in the ongoing process of reform of the European Court of Human Rights, increasing prominence is gradually being given to the importance of the role of national parliaments in the ECHR system, including in scrutinising the implementation of Court judgments and in scrutinising the Convention compatibility of laws and policies. As our predecessor Committee observed, the relatively strong institutional mechanisms and practices that have been developed in this country place the UK Government in a good position to provide strong leadership on this question in intergovernmental processes in the Council of Europe. We recommend that in the ongoing process

about the longer term future of the Court and the Convention, the Government becomes a champion of increasing parliamentary involvement in the ECHR system, beginning with the forthcoming Brussels Declaration on “Our Shared Responsibility” for the Convention rights which will be adopted at the end of March. (Paragraph 5.5)

Systemic issues

19. We are pleased to be able to report that the Government’s systems for responding promptly and fully to Court judgments concerning human rights are generally working well. (Paragraph 6.1)
20. We commend the Government in particular for the annual report that the Ministry of Justice has been publishing throughout the Parliament. (Paragraph 6.5)
21. There is scope, however, for the Government’s annual report to be even more helpful in future, and we recommend some ways in which to develop the Government’s report in the next Parliament. We recommend that future reports include not merely declarations of incompatibility under s. 4 of the Human Rights Act, but judicial exercises of the power in s. 3 of the Human Rights Act, to interpret legislation compatibly with Convention Rights. We also recommend that the report include significant judgments against other States which may have implications for UK law (this is already done, for example, in the Netherlands and Germany). (Paragraph 6.7)
22. Finally, we recommend that the Government’s annual report to our Committee on *Responding to human rights judgments* should be turned into an “Annual Human Rights Report” to Parliament. The growing introductory section on “Wider developments in human rights”, which takes in the UK’s reporting to UN human rights monitoring bodies as well as responses to court judgments, could usefully be expanded in future to make the report a more general report, akin to the Foreign Office’s annual report to the Foreign Affairs Committee on Human Rights, but focusing on human rights in the UK. Such a report could then usefully form the basis of the annual appearance of the Human Rights Minister before this Committee. (Paragraph 6.8)

Declaration of Lords' Interests

Baroness O'Loan

Chair, Daniel Morgan Independent Panel

Member, Independent Review Panel for Police Service of Northern Ireland Operation Stafford.

Member, International Contact Group, Basque Country

A full list of members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Formal Minutes

Wednesday 4 March 2015

Members present:

Dr Hywel Francis, in the Chair

Sarah Teather

Baroness Kennedy of the Shaws
Baroness Lister of Burtersett
Baroness O'Loan

Draft Report (Human Rights Judgments), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be now considered.

Paragraphs 1.1 to 6.8 read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to each House.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 11 March at 9.30 am

List of Reports from the Committee during the current Parliament

Session 2014–15

First Report	Legal aid: children and the residence test	HL Paper 14/HC 234
Second Report	Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill	HL Paper 49/HC 746
Third Report	Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill	HL Paper 62/HC 779
Fourth Report	Protocol 15 to the European Convention on Human Rights	HL Paper 71/HC 837
Fifth Report	Legislative Scrutiny: Counter-Terrorism and Security Bill	HL Paper 86/HC 859
Sixth Report	Violence against women and girls	HL Paper 106/HC 594
Seventh Report	Human Rights Judgments	HL Paper 130/HC 1088

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014
Eleventh Report	Legislative Scrutiny: Care Bill	HL Paper 121/HC 1027
Twelfth Report	Legislative Scrutiny: Immigration Bill (second Report)	HL Paper 142/HC 1120
Thirteenth Report	The implications for access to justice of the Government's proposals to reform judicial review	HL Paper 174/ HC 868
Fourteenth Report	Legislative Scrutiny: (1) Serious Crime Bill and (2)	HL Paper 189/HC 1293

Deregulation Bill

Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty-third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 48/HC 634
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141

Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549
Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777