

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty Briefing on the impact of the European Convention on Human Rights

Background

1. Human rights, in a world of sovereign states, are not self-enforcing. We rely on countries and their governments to make sure that human rights are promoted and protected. This is both a matter of parliamentary and governmental efforts – taking executive and legislative action to combat abuses and protect rights – and work by civil society, when which citizens, NGOs, the media, and others work together to hold the government to its commitments.
2. The European Convention on Human Rights is an international treaty drafted in 1950. The UK signed up to the treaty in 1950 and in 1966 the UK granted individuals the right of individual petition – that is, the right to take their case directly to the European Court of Human Rights. Under Article 46 of the Convention, Member States agree to abide by the final judgment of the Court in any case to which they are party. As a matter of international law, the UK is required to adhere to its treaty obligations and therefore should implement judgments made by the Court in cases involving the UK.¹
3. However the judgments of international courts do not come with enforcement powers attached – the ECHR has no way of requiring that judgments be implemented. Judgments of the Court do not have direct effect in Member States and Strasbourg has no ability to require Member States to amend their laws, nor to mandate the exact terms of any legislation. The European Court of Human Rights

¹ As noted by former Attorney General Dominic Grieve, the UK is signatory to some 700 treaties with binding mechanisms: see Rt Hon Dominic Grieve QC MP, *Why Human Rights should matter to Conservatives*, 3rd December 2014 at University College London, page 7.

relies instead on governments' continued commitment to the ideals it embodies, implementing judgments in their own domestic jurisdictions. Equally, the Convention requires each State to weigh in, implementing the ECHR's requirements in national law – for example, by our Human Rights Act – and contributing to our understanding of those rights.

The record of the ECHR worldwide

4. The record of the ECHR as a tool for protecting the rights of people across Europe is overwhelmingly positive. Compared to other regional human rights treaties, it has the best record of compliance with court judgments, especially when its far greater scope and responsibilities are taken into account. It provides a means of legal redress and reform for millions of those whose governments have signed up to it.
5. Its record demonstrates the crucial role it has played in supporting democracy, the rule of law, and respect for human rights in Europe and around the world:
 - i. After the High Court granted an injunction against the reporting of the Thalidomide tragedy, the European Court of Human Rights found in 1979 that the prohibition was contrary to Article 10: the public interest in the release of the story outweighed the legitimate aims behind the law of contempt of court.²
 - ii. In 1984 Strasbourg ruled that the police's use of secret telephone tapping – conducted without any legal authorisation by Parliament – was a breach of Article 8, since it lacked any proper legal basis.³
 - iii. In 1981, the European Court of Human Rights found Northern Ireland's law criminalising homosexuality to be a breach of Article 8 of the ECHR, leading to Northern Ireland repealing that law a year later.
 - iv. And the ramifications of that judgment went even wider. Other states with similar laws recognised the need for change. Cyprus, for example, decriminalised homosexuality in 1998 in response to another ruling that its laws breached Article 8.⁴ And the United States' Supreme Court relied on ECHR jurisprudence to strike down US state laws which criminalised homosexuality as unconstitutional.⁵

² *Sunday Times v. the United Kingdom* (1979) 2 EHRR 245.

³ *Malone v the United Kingdom*, (App. No. 8691/79).

⁴ *Modinos v. Cyprus*, Application No. 15070/89, judgment of 22 April 1993.

⁵ *Lawrence v Texas* 539 US 558 (2003),

- v. In 1999, the European Court of Human Rights protected victims of crime by finding that the police's failure to properly protect a young boy from being seriously wounded and his father from being killed by a stalker breached their rights to life under Article 2 of the ECHR.⁶
- vi. This ruling has gone on to assist all manner of other victims of crimes, where the state has failed to act to protect them. For example, in 2012 the Court found that the Croatian government's failure to safeguard individuals with disabilities from appalling harassment and abuse constituted a breach of Article 3.⁷
- vii. And the Court has protected children from shocking mistreatment. After very young children were left with severe psychological injuries as a result of severe neglect – repeatedly reported to the social services to no effect – the Court found that their rights against inhuman and degrading treatment had been breached.⁸ In their case, it took 5 years for Social Services to act and put them in care, despite repeated and sustained complaints by teachers, neighbours, and healthcare professionals. The children were kept in a house which was filthy – with faeces smeared in places – and were often locked in rooms or locked outside. They were malnourished and forced to go through bins for food, and often had bruising all over their bodies.
- viii. It has also protected those with mental disabilities where they have lacked legal safeguards on their care. In one case, HL, a severely autistic man, was readmitted to a hospital after living with his paid carers. He lacked capacity to consent to the readmission and, since no decision was taken to section him under the Mental Health Act 1983, the legal basis of his detention was unclear. His carers – who thought his detention unlawful and wrong – lost their case against his readmission in the House of Lords, which found that, under the common law of false imprisonment, HL had not even been detained.⁹ Nonetheless, taking his case to Strasbourg, the European Court of Human Rights unanimously found that his detention had no adequate legal basis, there being no fixed procedural rules by which either the admission and

⁶ *Osman v the United Kingdom* (87/1997/871/1083).

⁷ See *Dordević v Croatia* (App. no. 41526/10).

⁸ *Z and others v the United Kingdom* (App. No. 29392/95).

⁹ *In re L* [1998] UKHL 24. The Lords additionally found that, even if HL had been detained for the purposes of the tort of false imprisonment, his detention would have been justified by the doctrine of necessity.

detention of compliant incapacitated persons was conducted. HL's detention was therefore contrary to Article 5, the right against arbitrary detention.¹⁰

- ix. In 2010, the Court released another landmark judgment for those with mental disabilities. Hungary's constitution discriminatorily denied the right to vote to anyone subject to guardianship as a result of their mental health, regardless as to whether they had capacity to make their own choices. Strasbourg found that this was an unjustified interference with the right to vote under Article 3 of Protocol 1.¹¹
- x. In the same year, the European Court of Human Rights ruled that the UK police's 'stop and search' powers under section 44 of the Terrorism Act 2000, exercisable without any suspicion whatsoever, were discriminatory and unlawful, after a journalist and a peaceful protestor were wrongly stopped from attending a demonstration.¹² It was only after the Court made its finding that the Coalition Government repealed the provision allowing for such powers.
- xi. In 2013, Liberty intervened to support the case of Ms Nadia Eweida, an employee of British Airways, after her appeals were dismissed in the UK. Bringing her case to the European Court of Human Rights, it found that the refusal to permit her to wear her cross over her uniform, in her role meeting members of the public, breached both her rights to religious freedom under Article 9 and her rights against discrimination under Article 14.¹³ Strasbourg set out even stronger protections of religious freedom by its finding that the State is under a positive duty to secure the rights under Article 9, requiring it, among other things, to make sure that religious freedom is respected by private employers.¹⁴
- xii. In *S and Marper v United Kingdom*, the European Court of Human Rights held that retaining DNA samples of individuals who had been arrested but later acquitted violated the Article 8 right to respect for private life. The case concerned the continued retention by the police of the fingerprints and DNA samples taken from a boy of 11 who was arrested but later acquitted. When

¹⁰ *HL v the United Kingdom*, (App. no. 45508/99).

¹¹ *Alajos Kiss v Hungary* (App. No. 38832/06).

¹² *Gillan & Quinton v the United Kingdom* (App. No. 4158/05).

¹³ *Eweida and others v the United Kingdom* (App. Nos. 48420/10, 59842/10, 51671/10, and 36516/10).

¹⁴ See *Eweida*, paragraph 84.

the Coalition Government came to power in 2010, reform of the DNA database one of the flagship policies taken through by its Protection of Freedoms Act 2012.

6. And the Court is clear as to its role to protect rights through increased legal and political accountability. Where rights are found to have been breached, Strasbourg requires the state to remedy the breach but rarely awards significant compensation to those affected.
7. To take just one example, when the Court found the UK to have breached Articles 8 and 12 – the right to private and family life and the right to marry, respectively – by failing to recognise the sex of post-operative transsexuals for the purposes of marriage, pension rights, and other issues, no damages were awarded.¹⁵ The recognition of the breach of rights, with the Government’s subsequent acceptance of the need for legislative reform, was sufficient to remedy the violation.
8. Where damages for breaches of human rights are awarded, the amounts are usually low. In one study of a random cross-section of damages awards across one year at Strasbourg, the majority of those who received compensation were awarded between £3,000-£4,000.¹⁶

Strasbourg’s effect in courts and legislatures across the world

9. Almost all of the changes wrought by the European Court of Human Rights have been widely accepted by the Government, Parliament, and the public. As recently observed by a Joint Parliamentary Committee,

“In cases involving the UK just over a decade ago [namely, *Smith and Grady v United Kingdom*¹⁷ and *Lustig-Prean and Beckett v United Kingdom*¹⁸] the Court held that dismissal from the armed forces on the sole basis of homosexuality was contrary to Article 8 of the Convention (which guarantees the right to private and family life) read together with Article 14 (which prohibits discrimination in the enjoyment of Convention rights). Yet at the time the UK Government, in its submissions before the Court, had argued that “admitting homosexuals to the armed forces at this time would have a

¹⁵ *Christine Goodwin v United Kingdom* (Application no. 28957/95).

¹⁶ See ‘Measuring Violations of Human Rights: An Empirical Analysis of Awards in Respect of Non-Pecuniary Damage Under the European Convention on Human Rights’, Altwicker-Hamori, S., Altwicker, T., and Peters, A., available here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2631404.

¹⁷ (1999) 29 EHRR 493.

¹⁸ (2000) 29 ECHR 548.

significant and negative effect on the morale of armed forces' personnel and, in turn, on the fighting power and the operational effectiveness of the armed forces". Moreover, the House of Commons had itself voted against any change to the Government's policy, by a majority of 188 votes to 120. But following the Court's judgment, the Government acted quickly to end the ban on homosexuals in the military, and today it seems inconceivable that the Government or Parliament would seek to reinstate it. Indeed, [Secretary General of the Council of Europe, Thorbjørn Jagland] told us that "the rights of LGBT people," and concern over infringement of these rights in some member states, was now one of the issues raised most frequently and forcefully by the UK Government within the Committee of Ministers."¹⁹

10. In fact, the Government has recently sought to amend the current Armed Forces Bill to remove "homosexual acts" from the list of residual grounds of dismissal from the military.

11. The same is true of other countries, such as Germany, which – soon after Strasbourg's judgment in *Lustig-Prean* – voted to repeal the ban on those who are homosexual serving in the military. As academics have noted, "Between 1991 and 1998, not a single country abandoned its discriminatory policy or practices [to exclude those who are homosexual from their militaries]. During the decade following the *Lustig-Prean & Beckett* judgment, sixteen countries did so."²⁰

12. And other examples abound:

"...when the Hungarian (2002) and the Portuguese Constitutional Courts (2005) declared unconstitutional the unequal age-of-consent laws in those countries, they relied heavily on the *Sutherland* decision finding that the UK's age-of-consent statute contravened the European Convention. In 2007, the Irish Supreme Court overturned national laws that prohibited changing a birth certificate following sex reassignment, relying on the ECtHR's decision in *Goodwin v. United Kingdom*."²¹

13. But this also shows something else of real importance. What is clear from these examples is that the compliance of the United Kingdom was at the forefront of these

¹⁹ Joint Committee, 'Draft Voting Eligibility (Prisoners) Bill: Report', Session 2013-14, 16 December 2013, <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/103.pdf>, accessible here:

²⁰ See Helfer, L., and Voeten, E., 'International Court as Agents of Legal Change: Evidence from LGBT Rights in Europe', in *International Organization* 68, Winter 2014, pp. 77-110, pp. 90 and 93.

²¹ See Helfer and Voeten, p. 89. For footnotes, see original.

crucial legal changes. The fact that the UK complied with these historic decisions surely played a very significant role in ensuring Europe-wide reform in support of LGBT rights.

14. Important too is Strasbourg's reliance on the concepts of subsidiarity and the margin of appreciation. It represents Strasbourg's deference to the legislatures and courts of Member States in the implementation of rights in accordance with domestic traditions, long followed by the Court and codified in the Brighton Declaration of 2012. Crucial to its mandate to supervise human rights compliance it not only requires claimants to take their cases to the highest appeal courts in their countries of origin, but it takes very seriously the views of those courts. For example, Strasbourg has recognised the value of decisions and analysis made by UK courts, and even where UK courts depart from ECHR jurisprudence.
15. This is demonstrated by the case of *Horncastle*, which concerned the UK's system for dealing with hearsay evidence in criminal courts. The European Court of Human Rights had previously found that the use of hearsay evidence breached the right to fair trial.²² Both the Court of Appeal²³ and the Supreme Court²⁴ disagreed, with the Supreme Court explaining that the European Court of Human Rights had not considered the substantial safeguards provided in UK criminal procedure in relation to hearsay evidence, with Lord Phillips noting there will be:

"...rare occasions where the domestic court has concerns as to whether a decision of the Strasbourg court sufficiently appreciates or accommodates particular aspects of our domestic process. In such circumstances, it is open to the domestic court to decline to follow the Strasbourg decision, giving reasons for adopting this course."

16. When the issue made its way back to Strasbourg, the European Court of Human Rights agreed with the Supreme Court and found that the protections were in fact sufficient.²⁵ Similarly, in *Cooper v the United Kingdom*,²⁶ which concerned the court martial system, the Court had the benefit of the information on safeguards set out in

²² *Al-Khawaja and Tahery v United Kingdom* (2009) 49 EHRR 1.

²³ *R v Horncastle* [2009] EWCA Crim 964.

²⁴ *R v Horncastle* [2009] UKSC 14.

²⁵ *Horncastle and others v United Kingdom* (Application no. 4184/10).

²⁶ App. No. 48843/99.

R v Spear.²⁷ As a result, the Court accepted the House of Lords had been correct in *Spear* and held that the court martial system was in fact fair.

17. And the same is true of the decision-making of national Parliaments. Strasbourg takes very seriously their role in laying down human rights standards for each country through legislation. For example, in one case, concerning the UK's ban on political advertising in the broadcast media, the European Court of Human Rights paid close attention to the Communications Act 2003 and Parliament's deliberation in passing it.²⁸ It concluded that, within the UK's margin of appreciation, its Parliament had set out its view of the balance between fairness in the regulation of political debate and the requirements of freedom of speech. The Court concluded that this balance should not be disturbed, and found for the UK Government.
18. And judgments of the Court of Human Rights are extremely well-respected internationally, whether in Commonwealth countries or further afield. For example, much human rights case law in Australia has taken into account jurisprudence of the ECHR, including many Strasbourg decisions on freedom of political speech,²⁹ the concept of proportionality,³⁰ the right to fair trial,³¹ and the requirements of refugee protection.³² As the former Australian High Court judge, Michael Kirby, stated, it is "inevitable, even in constitutional cases, that Australian judges will draw upon relevant international sources, particularly where those sources are as thoughtfully and persuasively reasoned as decisions of the European Court of Human Rights."³³

International compliance with human rights

19. Other critics argue that the UK shouldn't have to comply with Court judgments since some other member states have poor compliance records. This argument is disingenuous. Governments should be proud of their commitment to human rights,

²⁷ [2002] UKHL 31.

²⁸ *Animal Defenders International v the United Kingdom* (App. No. 48876/08).

²⁹ See *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1, *Theophanous v Herald & Weekly Times* (1994) 182 CLR 104, and *Leask v Commonwealth* (1996) 187 CLR 579.

³⁰ See *Minister for Resources v Dover Fisheries Pty Ltd* (1993) 116 ALR 54, *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181, and also *Leask*.

³¹ See *Dietrich v The Queen* (1992) 117 CLR 292, *Strong v The Queen* (2005) 224 CLR 1, *Mallard v The Queen* (2005) 224 CLR 125, and *Antoun v The Queen* (2006) 80 ALJR 479.

³² See *Minister for Immigration & Multicultural Affairs v Respondents S152/2003* (2004) 222 CLR 1, *VRAW v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCA 1133, and *Applicants M160/2003 v Minister for Immigration & Multicultural & Indigenous Affairs* (2005) 219 ALR 140.

³³ See 'Australia's growing debt to the European Court of Human Rights', the Seventh *Fiat Justitia* lecture at Monash University, 5 May 2008, available at: http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_feb08.pdf.

and not seek to use the abuses of others to shirk their responsibilities. It is of course true that some countries – of which the UK is rightly critical – repeatedly fail to meet the ECHR's standards. For example, the UK Government has been highly critical of the administration of Russian President, Vladimir Putin, a government with one of the worst record of both rights abuses and non-compliance with Court judgments.

20. But the UK's abrogation of its duties will not make human rights compliance across the world any better. In fact, it will make it much worse. Domestic actors in countries such as Russia and Turkey rely on the judgments of the European Court in powering their own efforts at political and legal change. Were the UK to routinely shrug off the Court's jurisdiction, the credibility of the ECHR system would be devastated as both a tool for international protection and domestic reform.
21. The ECHR's record in protecting LGBT rights is particularly important in light of recent actions of some governments in opposing the consensus on LGBT rights. Russia, for example, has recently legislated to criminalise what it describes as 'homosexual propaganda' – a blatant attempt to discriminate against and abuse LGBT persons in that country.³⁴ In an area in which case law of the ECHR has been of crucial importance, the UK Government must continue to support LGBT rights by supporting the Convention.
22. For citizens of many countries, the ECHR is not something to be disparaged and degraded: it provides an essential avenue for any attempts at reform at home. The Government would do well to listen to the families of those killed during the Russian Government's military assault against hostage-takers in Beslan Primary School. In 2005, 331 people, including 179 children, were killed a result of Russia's disproportionate military measures. As evidenced by the mother of one of the victims, Ella Kasayeva, the ECHR remains the only means of redress for victims of such abuses:

The European Court of Human Rights is a benchmark of justice; it is a body that should be seen as an example to everybody ... Once they have adopted the European Convention on Human Rights, states should follow it, otherwise chaos will ensue... Beslan happened, and not a single person has been found responsible. We could not find justice in our country; and this again proves that we need such a Court. If even the Strasbourg Court was not there to support us, it really would be a scary world in which to live...

³⁴ See, for example, *The Guardian*, 'Russia passes law banning gay 'propaganda'', 11 June 2013, available here: <http://www.theguardian.com/world/2013/jun/11/russia-law-banning-gay-propaganda>.

[Were the UK to fail to uphold the ECHR], it would be an excuse for our government to say “We don’t want it either!” Putin would point at the UK straight away. It would be a catastrophe. [The UK] has to understand; we all in live in the same world and we all have an impact on one another. The UK must not think only of itself, because this will lead to other countries completely disregarding the rule of law...

*It is hard to overestimate the significance of the European Court of Human Rights for the Russian people. It is the only deterrence from this lawlessness. It is our only hope.*³⁵

23. Those who claim that despotic regimes ignore the European Court of Human Rights show deep disrespect towards those who risk their lives and livelihoods attempting to reach it. Take, for example, the harassment of those who have helped bring legal challenges to Russia’s military operations in Chechnya. As the Parliamentary Assembly of the Council of Europe (PACE) warned in 2007, “acts of intimidation have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications. They concern mostly, but not exclusively, applicants from the North Caucasus region of the Russian Federation.”³⁶

24. Conspicuous also is the Russian Government’s failure to even investigate the deaths of journalists Anna Politkovskaya³⁷ and Natalya Estemirova,³⁸ both of whom became well-known for their reporting on the wars in Chechnya – the events of which became the subject of Strasbourg’s scrutiny. As Amnesty International reported,

“Throughout the ongoing armed conflict in the Chechen Republic, the Russian Federation authorities have attempted to restrict the gathering and dissemination of information about the human rights situation in the North Caucasus. Human rights defenders and activists speaking out about the

³⁵ See report at UK Human Rights Blog, “‘UK must not think only of itself’: Massacre families urge UK not to leave ECHR – Alice Donald”, 24 October 2014, available here: <https://ukhumanrightsblog.com/2014/10/24/uk-must-not-think-only-of-itself-massacre-families-urge-uk-not-to-leave-echr-alice-donald/>.

³⁶ See PACE, ‘Member states’ duty to co-operate with the European Court of Human Rights’, Doc. 11183, 9 February 2007, available here: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11636&lang=en>. See also the Report’s Appendix I.

³⁷ See Amnesty International, ‘Russian Federation: Amnesty International condemns murder of human rights journalists Anna Politkovskaya’, 10 July 2006, available here: <http://web.archive.org/web/20061010184722/http://news.amnesty.org/index/ENGEUR460432006>.

³⁸ See Amnesty International, ‘Human rights activist Natalia Estemirova murdered in Russia’, 16 July 2009, available here: <https://www.amnesty.org/en/latest/news/2009/07/human-rights-activist-natalia-estemirova-murdered-russia-20090716/>.

situation in region, those investigating such abuses and those who have sought redress with the European Court of Human Rights have themselves increasingly become victims of serious human rights violations.”³⁹

25. A PACE statement also condemned the murder of human rights lawyer Stanislav Markelov, “whose untiring efforts to combat the impunity of those responsible for human rights violations in Chechnya and elsewhere in the north Caucasus cost him his life. This murder shows that the remedies against human rights violations are still fraught with pitfalls and dangers.”⁴⁰ As *The Washington Post* had previously reported, “Russians who appeal to the European Court of Human Rights after their relatives disappear or are killed in Chechnya or neighboring Ingushetia face constant threats to force them to drop the cases. In at least five instances, applicants to the court were themselves killed or had disappeared, according to lawyers, human rights groups, court records and relatives.”⁴¹

26. Nonetheless, even with Russia the prospect of the ECHR as a tool for domestic reform remains clear. As soon as Russia joined the Council of Europe, it permanently stopped carrying out the death penalty.⁴² And the victims of military action in Chechnya, for example, have had some measure of justice – their day in Court, and awards of just satisfaction for the appalling abuses they suffered. Indeed, as Emma Gilligan found,

“The court’s role as a partial corrective to the impunity in Chechnya has witnessed the burgeoning of one of the most important legal recourses for Chechen civilians...the reality is that the European Court of Human Rights is the one consistent judicial recourse that remains dedicated to exposing the seriousness of the crimes in the Northern Caucasus and building a case of documentary evidence. As with the Kurdish cases in southeast Turkey in the 1990s, the volume and critical nature of the violations in Chechnya are forcing

³⁹ See Amnesty International, ‘Russian Federation: The Risk of Speaking Out – Attacks on Human Rights Defenders in the context of the armed conflict in Chechnya’, 9 November 2004, available here: <https://www.amnesty.org/en/documents/eur46/059/2004/en/>.

⁴⁰ See Council of Europe, ‘Statement by Dick Marty, PACE rapporteur on the human rights situation in the north Caucasus, on the murder of Stanislav Markelov’, 20 January 2009, available here: <https://wcd.coe.int/ViewDoc.jsp?p=&id=1396109&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true>.

⁴¹ *The Washington Post*, ‘Russians’ Appeals to Court Bring Intimidation, Death’, 3 July 2005, available here: <https://www.washingtonpost.com/archive/politics/2005/07/03/russians-appeals-to-court-bring-intimidation-death/b87918f0-cd36-4bec-a9ab-706f800d956a/>. See also Gilligan, E., *Terror in Chechnya: Russia and the Tragedy of Civilians in War*, Princeton: Princeton University Press, 2010, p. 188.

⁴² Council of Europe, ‘Abolition of the Death Penalty’, undated, accessible here: http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Death_Penalty/default_en.asp.

the Council of Europe, albeit slowly and under pressure from civil society, to intensify pressure on Russia to reform the country's domestic legislation and to open criminal trials in response to the Chechen judgments".⁴³

27. In Turkey, the ECHR provides the chief template for democratic reform. Since it amended its constitution in 2012 to allow human rights claims to be brought directly to its own Constitutional Court, under provisions akin to our own HRA, citizens have at least one avenue for government accountability.⁴⁴ This cannot lightly be dismissed.
28. Indeed, in an increasingly authoritarian climate, Turkey's judiciary – backed up by these reforms – may represent the last bulwark for human rights and the rule of law in that country.⁴⁵ To take one example, Turkey's Constitutional Court recently quashed the convictions of a large number of army officers accused – in politically contested circumstances⁴⁶ – of plotting to overthrow the government as a result of breaches to their rights to fair trial. The Court found serious procedural problems in the handling of evidence during the original trial.⁴⁷ The re-trial later collapsed.⁴⁸
29. Similarly, one week after the Constitutional Court of Turkey struck down President Erdoğan's attempt to ban Twitter, and the President accused the Court of failing to adhere to Turkey's "national values"⁴⁹, former Judge Haşim Kılıç stated, "In states under the rule of law, courts neither work according to orders and instructions nor

⁴³ See Gilligan, *Terror in Chechnya*, 2010, pp. 184-5.

⁴⁴ See Judge Burhan Üstün, 'Protection of Human Rights by the Turkish Constitutional Court', undated, accessible here: http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Burhan_Ustun.pdf, and Article 148 of the Turkish Constitution, accessible here: https://global.tbmm.gov.tr/docs/constitution_en.pdf.

⁴⁵ See, for example, *Al-Monitor*, 'Turkey's Constitutional Court stands up to Erdoğan', 22 July 2015, accessible here: <http://www.al-monitor.com/pulse/originals/2015/07/turkey-constitutional-court-last-stronghold-rule-of-law.html#>, and also *Hürriyet Daily News*, 'Turkey's Constitutional Court overturns controversial judicial bill', 11 April 2014, accessible here: <http://www.hurriyetdailynews.com/turkeys-constitutional-court-overturns-controversial-judicial-bill.aspx?pageID=238&nID=64902&NewsCatID=338>.

⁴⁶ See, for example, Tisdall, S., 'Turkey's Sledgehammer Coup verdict: justice or Soviet-style show trial?', in *The Guardian*, 25 September 2012, available here: <http://www.theguardian.com/world/2012/sep/25/turkey-sledgehammer-coup-trial-verdict>.

⁴⁷ See *Al-Monitor*, 'Landmark ruling frees Turkish officers in Sledgehammer case', 20 June 2014, accessible here: <http://www.al-monitor.com/pulse/tr/originals/2014/06/daloglu-turkish-military-officers-ruling-sledgehammer.html>.

⁴⁸ See *BBC News*, 'Turkish 'Sledgehammer' coup plot trial collapses', 31 March 2015, available here: <http://www.bbc.co.uk/news/world-europe-32136809>.

⁴⁹ See *Al-Monitor*, 'Erdogan disrespects Turkey's top court', 9 April 2014, available here: <http://www.al-monitor.com/pulse/originals/2014/04/erdogan-disrespect-court-twitter-constitutional.html#>.

are they directed by friendships and enmities.”⁵⁰ And Turkey’s Government has repeatedly criticised its courts for ruling against it, especially in cases involving individual rights.⁵¹ In such circumstances, it would surely be dangerous for other Member States to attack the ECHR. Compliance with the judgments of its Court is the best support we can provide for these and other national reforms across the world.

The importance of the UK’s example

30. The UK has played a crucial role in upholding the most successful mechanism for the protection of rights to arise out of the horrors of the Second World War. As the Secretary General of the Council of Europe Thorbjørn Jagland has stressed, the UK is widely seen as “the best pupil in the class”.⁵² And so countries with particularly poor human rights records – such as Russia and Turkey – would likely welcome the UK’s non-compliance. It would plainly enable them to justify their own evasion of Court judgments against them and to dishonour the Convention.
31. The words of the families of the victims of the Beslan Massacre in Russia, cited earlier, are echoed by those of Hossam Bhagat, the former Executive Director of the Egyptian Initiative for Personal Rights, and veteran of the Tahrir Square uprising, who said in 2011:

Since we started our uprising against dictatorship in Egypt last January, many British officials visited Cairo and asked how they could help our struggle. The most important thing that the British can do to support human rights in Egypt is to support human rights in the United Kingdom. We have all heard of your Government’s attempt to repeal the UK’s Human Rights Act. Diluting current human rights protections or restricting fundamental rights to citizens rather than humans, would set us all back. It is significantly more difficult for us to

⁵⁰ See *The Financial Times*, ‘Turkey’s top judge accused Erdogan of damaging the rule of law’, 25 April 2014, available here: <http://www.ft.com/cms/s/0/1a4b7676-cc7e-11e3-9b5f-00144feabdc0.html#axzz47s7I9amV>.

⁵¹ See, for example, *Today’s Zaman*, ‘Erdoğan targets European Court of Human Rights’, 2 October 2015, accessible here: http://www.todayszaman.com/columnist/abdullah-bozkurt/erdogan-targets-european-court-of-human-rights_400424.html, and *Hürriyet Daily News* ‘Turkish Constitutional Court head complains of ‘pressure’ on members’, 2 January 2015, accessible here: <http://www.hurriyetdailynews.com/turkish-constitutional-court-head-complains-of-pressure-on-members.aspx?pageID=238&nID=76408&NewsCatID=338>.

⁵² Joint Committee on the draft Voting Eligibility (Prisoners) Bill, Oral and Written Evidence, p. 185.

*fight for universal human rights in our country if your country publicly walks away from the same universal rights.*⁵³

32. And these views find resounding support in movements for human rights across the world. In 2015, for example, 25 veterans of the struggle against apartheid in South Africa wrote to *The Observer* to register their profound disapproval of the UK Government's plans to repeal the Human Rights Act:

*It's now more than two decades since the people of Britain stood up for the human rights of people in South Africa. Now it's our turn to reciprocate. We've heard with horror the plans to scrap the Human Rights Act and replace it with a so-called British Bill of Rights and Responsibilities. Rights do not belong to any one nationality – they must be universal. Dividing people, setting their rights and freedoms apart on the basis of their passport or race, stripping them of their human rights, led to the worst abuses of the 20th century. It led to apartheid. And it can lead only to further injustice and dispossession. In the light of our own national experience, we urge the UK government to think again.*⁵⁴

33. And these predictions are coming true. Governments all over the world look to the UK as an exemplar of the ECHR's implementation in national law, and cite the UK's non-compliance with the ECHR as a reason for disregarding human rights themselves. For example, Kenyan President Uhuru Kenyatta explicitly relied upon the UK Government's threats to ignore the European Court of Human Rights to shirk the jurisdiction of the International Criminal Court, in which he had been accused of crimes against humanity.⁵⁵ And Russian President Vladimir Putin only last year signed into law an act permitting his country to ignore rulings of the Court of Human Rights, closely reflecting the UK Government's proposals to do the same.⁵⁶

⁵³ Liberty, 'Human Rights or Citizen's Privileges: Liberty's response to the Commission on a Bill of Rights discussion paper: Do we need a UK Bill of Rights?', December 2011, p. 3, available here: <https://www.liberty-human-rights.org.uk/sites/default/files/Human%20Rights%20or%20Citizens'%20Privileges,%20Nov%202011.pdf>.

⁵⁴ See *The Observer*, 'A lesson in human rights', 19 July 2015, available here: <http://www.theguardian.com/theobserver/2015/jul/19/letters-impact-of-scottish-mps-westminster>.

⁵⁵ See, UK Human Rights Blog, 'Kenyan President uses Tory human rights plans to defend war crimes charges', 24 October 2014, available here: <https://ukhumanrightsblog.com/2014/10/24/kenyan-president-uses-tory-human-rights-plans-to-defend-war-crimes-charges/>.

⁵⁶ See *The Independent*, 'Vladimir Putin signs law allowing Russia to ignore international human rights rulings', 15 December 2015, available here: <http://www.independent.co.uk/news/world/europe/vladimir-putin-signs-law-allowing-russian-court-to-overthrow-international-human-rights-rulings-a6773581.html>.

34. And this point is made across the political spectrum, as evidenced by recent debates on the ECHR in the House of Commons. As Labour MP, Karen Buck, stated, “Britain provides leadership and inspiration in a troubled world. What kind of message do Ministers think they are now sending by providing such confusion and ambivalence over Britain’s commitment to the European convention on human rights?”⁵⁷
35. DUP MP, Jim Shannon, said the same when he asked, “Outside Europe, the United Kingdom’s membership of the European convention on human rights sends a strong signal of our continued commitment to upholding and advancing human rights globally. Is there not a good reason for our being a member of the convention when we can do something for those Bahá’í leaders in Iran who have been violated and persecuted because of their beliefs?”⁵⁸
36. The UK’s compliance with the ECHR is a cornerstone of its international platform for the respect of the rule of law and human rights. It is badly undermined by non-compliance, providing countries whose record it seeks to improve a counter-platform from which to make the charge of hypocrisy. And it would surely jeopardise the UK’s efforts at cross-border initiatives in fields such as asylum and security, losing the stamp of human rights which the ECHR system provides.
37. Governments and legislatures will, from time to time, disagree with decisions of courts of whatever kind. It is a source of pride that, despite understandable political frustrations, the UK has for decades distinguished itself from despots and dictators by respecting the rule of law. To continue to do so, it must not seek to evade or subvert its obligations under international law. Like anyone, the UK must comply with judgments against it. As the former Lord Chancellor, the Right Honourable Kenneth Clarke QC MP has commented, “The rule of law is one of our greatest exports” .⁵⁹
38. Rejection of the ECHR would call into question a legacy of which the UK is rightly proud. But it would also gravely threaten the basis on which people across the world campaign for peaceful, democratic reform in their own countries. The UK must

⁵⁷ See Hansard, Volume 608, Column 1285, 26 April 2016, available here: <https://hansard.parliament.uk/Commons/2016-04-26/debates/16042636000019/TopicalQuestions>.

⁵⁸ See Hansard, Volume 609, Column 510, 9 May 2016, available here: <https://hansard.parliament.uk/Commons/2016-05-09/debates/1605106000002/EuropeanConventionOnHumanRights>.

⁵⁹ Speech by the Lord Chancellor and Secretary of State for Justice Rt Hon Kenneth Clarke QC MP, CityUK Future Litigation event, Clifford Chance, 14th September 2011, available at <http://www.justice.gov.uk/downloads/about/moj/our-ministers-board/speeches/clarke-speech-future-litigation-140911.doc>.

continue to uphold the ECHR as a crucial tool for democratic change and government accountability.

39. Alongside other founding members, the UK is surely one of the Convention's trustees. It must continue to act as one.

Sam Hawke