

**Submission to the Committee of Ministers from the Committee on the
Administration of Justice (CAJ) in relation to the supervision of the cases
concerning the actions of the security forces in Northern Ireland**

Jordan v the United Kingdom, judgment final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment final on 4 August 2001
McKerr v the United Kingdom, judgment final on 4 August 2001
Shanaghan v the United Kingdom, judgment final on 4 August 2001
McShane v the United Kingdom, judgment final on 28 August 2002
Finucane v the United Kingdom, judgment final on 1 October 2003

and

Hemsworth v UK, judgment final on 16 October 2013
McCaughey & Others v UK, judgment final on 16 October 2013

October 2022

Introduction

1. The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights (FIDH). Its membership is drawn from across the community.
2. CAJ has regularly made Rule 9 communications to the Committee of Ministers on the 'McKerr group of cases' concerning the actions of the security forces in the 1980s and 1990s in Northern Ireland.
3. These submissions have charted the evolution of the 'package of measures' agreed to by the UK further to the above judgments, and their proposed replacement with measures agreed by the UK and Ireland, and political parties in the Northern Ireland Executive, under the December 2014 Stormont House Agreement (SHA). The submissions also cover the unilateral departure by the UK from its commitment to implement the SHA on the 18 March 2020, the UK Command Paper of July 2021 and the consequent *Northern Ireland Troubles (Legacy and Reconciliation) Bill* introduced into the UK Parliament in May 2022.
4. This Rule 9 communication is for consideration at the 1451st meeting (December 2022) (DH).
5. CAJ issued a lengthy Rule 9 Communication in July 2022, that provided a detailed critique of the *Northern Ireland Troubles (Legacy and Reconciliation) Bill* (hereafter 'the Bill').¹
6. This brief Rule 9 Communication provides further general measures information in respect of the Bill, relating directly to developments since the Decision taken by the Committee of Ministers in September 2022.²

Committee of Ministers (CM) Decision (September 2022)

7. At the time of the September meeting the Bill had cleared the lower house (Houses of Parliament) and passed to the House of Lords.³
8. The CM Decision of September 2022 recalled previous concerns regarding the UK departure from the (UK-Ireland) Stormont House Agreement to the present Bill, reemphasising that any legislation must be in full compliance with investigative duties under the ECHR.
9. The CM noted serious concern about the lack of formal public consultation on the Bill; as well as concerns about ECHR compatibility; and the 'minimal support' and public confidence in the Bill. The Decision however noted the UK now had stated an openness to 'constructive engagement' with stakeholders on the Bill, and strongly reiterated calls for the UK authorities to take all necessary measures and devote sufficient time before they pursue progression and adoption of the Bill. Reference was made to meaningful and effective engagement to address concerns.

¹ [https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD\(2022\)830E%22%5D%2C%22display%22:%5B%22%22%5D%2C%22EXEIdentifier%22:%5B%22DH-DD\(2022\)990E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD(2022)830E%22%5D%2C%22display%22:%5B%22%22%5D%2C%22EXEIdentifier%22:%5B%22DH-DD(2022)990E%22%5D%7D) and Addendum: [https://hudoc.exec.coe.int/eng#%7B%22display%22:%5B%22%22%5D%2C%22EXEIdentifier%22:%5B%22DH-DD\(2022\)990E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22display%22:%5B%22%22%5D%2C%22EXEIdentifier%22:%5B%22DH-DD(2022)990E%22%5D%7D)

² https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a831f5

³ <https://bills.parliament.uk/bills/3160/stages>

10. The CM urged the UK authorities, if the Bill was progressed, to amend the Bill in order to comply with the ECHR including in the following areas:
 - ensuring that the Secretary of State for Northern Ireland’s role in the establishment and oversight of the ICIR is more clearly circumscribed in law in a manner that ensures that the ICIR is independent and seen to be independent;
 - ensuring that the disclosure provisions unambiguously require full disclosure to be given to the ICIR;
 - ensuring that the Bill adequately provides for the participation of victims and families, transparency and public scrutiny;
 - reconsider the conditional immunity scheme in light of concerns expressed around its compatibility with the European Convention;
11. The CM also urged the UK authorities to reconsider provisions of the Bill that would prevent new civil claims and legacy inquests from continuing.

UK response to CM Decision

12. The CM Decision sought updated information from the UK by 24 October 2022 on “all developments in the legislative process and the measures undertaken to work with victims, their families and all other stakeholders”.
13. On this date the UK authorities forward a one page holding letter.⁴ This makes a general reference to continued Ministerial and official engagement with stakeholders.
14. As reported in our previous addendum submission, CAJ along with academic colleagues in the Model Bill Team, met with the UK Minister for Northern Ireland in the Lords (Lord Caine) as part of engagement on the Bill and set out our concerns regarding ECHR compliance. The Minister was both unwilling to consider any alternative policy to the current Bill (on grounds this would be politically untenable for the Conservative party) or substantive changes to matters such as the immunity scheme in the Bill. Instead, the Minister suggested Government was open to considering amendments that might make the Bill “less unpalatable” to victims.
15. Since September the UK has not initiated any formal public consultation or process or announced any pause in progressing the legislation. As set out in the UK response, the date for Second Reading in the Upper Chamber (House of Lords) was postponed from 13 September due to the passing of Queen Elizabeth II and is awaiting to be rescheduled for the Bill to continue to be progressed.
16. We reiterate concerns that whilst the UK authorities are now meeting with stakeholders there is no indication that this is a genuine effort to make meaningful substantive changes to the Bill.

British-Irish Intergovernmental Conference (BIIGC)

17. On the 7th October 2022 a scheduled meeting of BIIGC took place in London. This is a formal UK-Ireland mechanism established under the 1998 Good Friday Agreement.

⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a8b6c4

As is standard practice a Joint Communiqué was issued by the two Governments following the meeting on the topics discussed. This included the legacy bill on the basis of the Irish Government's concerns and how they may be addressed.⁵ No further information is available as to any steps the UK intends to take.

Oral Evidence of Secretary of State to Northern Ireland Affairs Committee

18. On the 18 October 2022 the Secretary of State for Northern Ireland, Chris Heaton-Harris MP gave Oral Evidence to the UK Parliament's Northern Ireland Affairs Committee on his work. MPs on the Committee raised the legacy bill.⁶
19. The Secretary of State reiterated an intention to push ahead with the Bill stating that Second Reading was planned for later in October.⁷ This pre-dated the resignation of the then UK Prime Minister, and this timetable has slipped.
20. The Secretary of State has remained in post following the appointment of a new UK Prime Minister. The new Prime Minister has also reinstated Johnny Mercer MP as Minister for [military] Veterans Affairs.⁸ As set out in our previous submission Mr Mercer was credited at the time of its introduction to the UK Parliament with being one of the architects of the present Bill, as part of a broader campaign to end investigations into military veterans. Mr Mercer had previously resigned in light of the present Bill not being introduced at an earlier stage before returning to post.
21. The Secretary of State at the Committee stated there would be Government amendments to improve the Bill but little by way of detail was set out and no specific amendments were committed to.⁹
22. When asked regarding the arbitrary cut off point for civil cases (an area there have been previous indications that the UK authorities may move on) no commitments were made, rather it was indicated the area was still under consideration.¹⁰
23. One area the Secretary of State was more definitive on was a question on the powers to make appointments to the legacy body that will be established by the Bill which are presently all vested in the Secretary of State. This engages amendments sought by the CM regarding circumscribing the Secretary of State's role. Concerns have been expressed about this matter, with a suggestion instead there be international involvement in the appointments. The response to the Committee however appears to rule this out, with a preference expressed for the appointments being 'UK only'.¹¹

⁵ <https://www.gov.uk/government/news/joint-communication-of-the-british-irish-intergovernmental-conference--7> "The Conference discussed the approach to the legacy of Northern Ireland's past and the value of further engagement on this crucial issue, in particular the Irish Government's concerns with the UK Government's proposed legislation and how those concerns might be addressed. The UK and Irish Governments also discussed issues of concern in respect to a number of individual legacy cases."

⁶ <https://committees.parliament.uk/oralevidence/10957/html/>

⁷ As above. Q404.

⁸ <https://www.gov.uk/government/people/johnny-mercer>

⁹ As above Q405.

¹⁰ As above Q406.

¹¹ As above Q408.

UK Parliament Joint Committee on Human Rights

24. On the 26th October 2022 the Joint Committee on Human Rights of both houses of the UK Parliament published a report into the Bill raising concerns that the legislation “risks widespread breaches of human rights law”.¹²
25. The Report¹³ concurs with the concerns of other stakeholders regarding the lack of ECHR compatibility of the Bill. The Committee puts forward amendments which would “fundamentally alter the entire approach of the Bill” and urges Government to “reconsider its whole approach” and instead put forward legislation which ensures “(i) investigations are independent, effective, timely, involve next of kin, and are subject to public scrutiny; (ii) perpetrators of serious human rights violations are held to account; and (iii) that all possible avenues for the pursuit of justice and the provision of an effective remedy are available to victims and their families.”¹⁴
26. The UK Government have not yet responded to this UK Parliamentary Committee report.

CM Meeting December 2022

27. The UK authorities to date have therefore taken a decision to simply continue to press forward with the Bill. There has been no pause announced for meaningful engagement which continues on an *ad hoc* basis. There has also been no commitments made to any amendments which would address any of the main concerns of ECHR compatibility of the Bill.

In light of this should this situation remain the case when the Ministers’ Deputies meet in December CAJ would urge consideration at this stage of the Committee of Ministers seeking an advisory opinion from the Court in relation to the Bill under Article 47 ECHR.

CAJ, October 2022

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¹² <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/173874/northern-ireland-troubles-bill-risks-widespread-breaches-of-human-rights-law/>

¹³ <https://committees.parliament.uk/publications/30491/documents/175903/default/>

¹⁴ Conclusions and recommendations paragraph 1.