

**Addendum Rule 9 Submission to the Committee of Ministers**  
***McKerr group v. the United Kingdom (Application No. [28883/95](#))***  
***Supervision of the execution of the European Court's judgments***  
**February 2023**

**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. This Rule 9 addendum is for consideration at the 1459<sup>th</sup> meeting (March 2023) (DH) and is to be read in conjunction with our January 2023 Rule 9 communication.<sup>1</sup>
3. The focus is on the Northern Ireland Troubles (Legacy and Reconciliation) Bill ('the Bill').<sup>2</sup>
4. As set out in the recent UK communication the Bill is awaiting scheduling of its third and final day of Committee Stage in the second chamber of the UK Parliament (House of Lords). The first two days took place on the 24<sup>th</sup> and 31<sup>st</sup> January 2023 respectively.<sup>3</sup>
5. The CAJ January 2023 Rule 9 communication provided an assessment of the proposed *Government amendments* to the Bill, published in the evening of 18 January 2023. We concluded these amendments did not address any of the concerns set out by the CM.
6. This addendum submission focuses on how Ministers responded to *non-governmental amendments* tabled by legislators during the Committee stage which would have addressed some of the concerns set out by the CM in its Decisions.
7. At Committee Stage in the House of Lords it is custom and practice that amendments are not voted upon. Rather Ministers will make a statement as to whether they are minded to accept or will reject non-government amendments if brought at a later stage.

*Amendments relating to effective investigations and the proposed legacy commission*

8. A series of amendments were tabled by Baroness Nuala O'Loan, a former NI Police Ombudsman, to probe the investigative function of the proposed independent Commission for Reconciliation and Information Recovery (ICRIR).<sup>4</sup>
9. The amendments citing *inter alia*, the concerns of the Committee of Ministers, would change the term 'review' in the legislation to the term 'investigation', to ensure the function of the ICRIR was to carry out investigations and not 'reviews.' A further amendment would require ICRIR 'investigations' when a person is seeking immunity;<sup>5</sup> a further amendment tabled by Lord Peter Hain would require that ICRIR investigations are carried out to criminal justice standards and are compliant with the investigative duties under the ECHR.<sup>6</sup>

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<sup>1</sup> [https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD\(2023\)131E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD(2023)131E%22%5D%7D)

<sup>2</sup> <https://bills.parliament.uk/bills/3160/stages>

<sup>3</sup> [https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD\(2023\)149E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD(2023)149E%22%5D%7D)

<sup>4</sup> [HL Hansard Volume 827: 24 January 2023 Column 152-3](#)

<sup>5</sup> [HL Hansard Volume 827: 24 January 2023 Column 152-3](#)

<sup>6</sup> [HL Hansard Volume 827: 24 January 2023 Column 155-6 Amendment 72](#)

10. The Minister Lord Jonathan Caine in response made clear the UK government would be rejecting all of these amendments.<sup>7</sup>

*Amendments relating to independence of ICIR*

11. In the second day Committee Stage session opposition legislator Lord Des Browe tabled an amendment to address the lack of independence in the appointments to the ICIR. A concern raised in the CM Decision.

12. Lord Browne’s amendments would change the appointing authority for all ICIR Commissioners so that the appointments were not made by Ministers (the Secretary of State) and would be instead made by the Northern Ireland Judicial Appointments Commission.<sup>8</sup> This Commission is an independent public body established as a result of the NI Criminal Justice Review that flowed from the Good Friday Agreement. The Commission makes independent appointments to judicial posts in Northern Ireland.<sup>9</sup>

13. Despite the Bill providing for the ICIR Chief Commissioner to be a person who holds, or has held, high judicial office the Minister Lord Jonathan Caine in response made clear the UK government would be rejecting these amendments.<sup>10</sup>

*Amendment to remove conditional immunities scheme*

14. Baroness Nuala O’Loan and others tabled an amendment that would remove the conditional immunities scheme from the Bill.<sup>11</sup> This would address the concerns of the CM regarding the immunities scheme. A further amendment tabled would remove the Secretary of State’s powers to provide internal ‘Guidance’ on how the immunities scheme should operate following the passage of the Bill.<sup>12</sup> A further probing amendment from Lord Browne required the ICIR to first consider whether granting an immunity from prosecution would be compatible with ECHR rights.<sup>13</sup>

15. The Minister Lord Jonathan Caine in response made clear the UK government would not be accepting these amendments and defended the conditional immunities scheme.<sup>14</sup>

*Strengthening the ICIR’s powers to compel disclosure*

16. Baroness O’Loan tabled an amendment to limit the qualification to ICIR disclosure powers (that the ICIR must ‘reasonably’ require the information requested – which on could present a significant qualification in powers).<sup>15</sup> This amendment would have had the potential to address one of the express areas of concern set out by the CM that the UK ensure that “the disclosure provisions unambiguously require full disclosure to be given to the ICIR”.

17. The Minister Lord Jonathan Caine in response made clear the UK government would not be accepting these amendments.<sup>16</sup>

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<sup>7</sup> [HL Hansard Volume 827: 24 January 2023 Column 168-9](#)

<sup>8</sup> [HL Hansard Volume 827: 31 January 2023 Column 572](#) [Amendment 12](#)

<sup>9</sup> <https://www.nijac.gov.uk/about-nijac>

<sup>10</sup> [HL Hansard Volume 827: 31 January 2023 Column 584](#)

<sup>11</sup> [HL Hansard Volume 827: 31 January 2023 Column 596-7](#)

<sup>12</sup> [Amendment 131](#)

<sup>13</sup> [HL Hansard Volume 827: 31 January 2023 Column 601-2](#)

<sup>14</sup> [HL Hansard Volume 827: 31 January 2023 Column 617-8](#)

<sup>15</sup> [HL Hansard Volume 827: 31 January 2023 Column 633-4](#) [Amendment 37](#)

<sup>16</sup> [HL Hansard Volume 827: 31 January 2023 Column 637](#)

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