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ECHR in a Changing World: Facts, Myths, and the UK Context

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Dear Chief Commissioner, Dear Alyson, Dear Denise thank you very much for the kind introduction, for the warm welcome and to the commission and the Bar for the invitation to deliver this year's Annual Human Rights Lecture. Not only is it a great honour and privilege to have been asked to deliver this prestigious lecture but it is also a very real pleasure to be back in Belfast and in The Bar Library.

Thank you also to the Lady Chief Justice, Siobhan, for her Opening Address.

The title of my reflections this afternoon is billed as the "ECHR in a changing world: facts, myths and the UK context".

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So let me start with a few reflections on the way the world has or is perceived to have changed or be changing.

The reason I do so is not only to contextualise what is happening but also to provide a backdrop for what may be seen as contradictory strands of recent developments, in particular as they affect the ECHR and the wider Council of Europe, and ultimately, perhaps, to identify some signs of optimism.

It is very difficult, at the moment, to escape headlines, whether in popular newspapers or in legal blogs and journals, predicting the end of international law and the rules-based international system, as we know it, and an end to any aspirations for an international rule of law we might have had. Adopting the language used by Canadian Prime Minister Carney in his speech at the World Economic Forum in Davos, they frequently suggest a rupture not a transition.

These articles and blogs tend to lead to two competing schools of thought". On the one hand, there are those who seek to highlight the achievements of the international law and the international rules-based system to date, and especially after the WWII, and – however incomplete and imperfect it may be - to reaffirm and seek to further improve that system. On the other hand, we have those who consider this approach as somewhat of a sentimental luxury

and advocate the adoption of or, in the telling of some, the return to raw power politics.

This debate is, of course, highly relevant in the context of the protection of human rights in Europe and in the UK including, in particular, in Northern Ireland. After all, not only is the ECHR a treaty governed by international law imposing obligations on states binding in international law, but so are also, most pertinently, the Belfast/Good Friday Agreement² and the Windsor Framework Agreement.

Leaving aside whether that is, in fact, what Prime Minister Carney intended to convey with his reference to rupture rather than transition, it seems clear that – while the almost daily news from the other side of the Atlantic have been stark - challenges to what we think of as the established international rules based order have been with us for some considerable time.

After all, I am speaking to you a mere two days after the 4th anniversary of the unlawful and brutal invasion by Russia, on 24 February 2022, of its democratic neighbour and fellow Council of Europe member, Ukraine.

² UNTS No 36776

Certainly, in the European context, there could be no starker reminder of those challenges and of what raw power politics looks like and can lead to, both internally and externally. There seems little doubt that this invasion was, in fact, a culmination of events and developments going back at least as far as the invasion of Crimea, the conflict in Eastern Ukraine and the downing of flight MH17 in 2014 or even the 2008 armed attacks on Georgia; some just did not see it that way until it was too late.

However, importantly, these developments on the international plane coincide – to put it neutrally – with serious challenges to the rule of law within the domestic context of an increasing number of states, not least in relation to the independence of the judiciary and the protection of the rights of unpopular minorities.

While one might readily point the finger at Member States such as Poland, Hungary, Türkiye and, until its expulsion from the Council of Europe, Russia, to name but a few, the profound nature of the challenges, even in the UK context, was reflected in the publication, last November, of the Report of the House of Lords Constitution Committee on “The rule of law: holding the line against tyranny and anarchy”.³ This report provides a very timely and, if I may respectfully say so, very helpful summary of the underlying concept of the rule of law, its foundational constitutional importance and of the multitude of current

³ HL Paper 211, published 20 November 2025 at <https://publications.parliament.uk/pa/ld5901/ldselect/ldconst/211/211.pdf>

challenges to it. In fact, it goes as far as underlining the fact that, while Parliamentary sovereignty ... means that Parliament has the power to pass any law. [...] with authority comes responsibility, and it is incumbent upon Parliament when making law to be mindful of the importance of the rule of law, and that to undermine it would be unconstitutional".⁴

This concern has, of course, also been one of the priorities of the Lady Chief Justice ever since I first met her in that capacity and is at the heart of the on-going series of talks on the "Rule of Law in Perspective", jointly organised by the Bar of Northern Ireland and the Office of the Lady Chief Justice – of which the next talk is, as I understand it, on 5 March.

So where is the ECHR – and I use this interchangeably for the Convention, which, of course, celebrated its 75th birthday last year, and/or the Court – in all of this?

Here again we observe two main strands of contemporaneous developments.

On the one hand we can see an increasing reliance on and adherence to the Convention and the Court in order to

⁴ *ibid.* § 169

1. act as the early warning system or conscience”⁵ the founding fathers envisaged to sound the alarm against the encroachment of tyranny”;⁶ and
2. to address breaches of the Convention obligations assumed by States.

On the other hand, we see a significant increase in overt criticism of and attacks on the Court, including from those in authority.

As an example of the former, it is clear for example that the Court is and will for the foreseeable future remain the only international court to establish the international responsibility of the Russian Federation for the shooting down of MH17 as well as for the mass human rights violations committed in the context of these conflicts since 2014 in Eastern Ukraine and more generally since its invasion of Ukraine in February 2022. This judgment, of course, follows earlier judgments both on the human rights violations committed during the invasion and subsequent annexation of Crimea in 2014⁷ and the conflict in Georgia in 2008.⁸

The Court’s judgment in *Ukraine and Netherlands v Russia*,⁹ which the Court handed down in July last year, is remarkable in that it runs

⁵ Pierre-Henri Teitgen during a Session of the Consultative Assembly of the Council of Europe on 07.09.1949

⁶ Sir David Maxwell Fyfe KC, Grotius Dinner 1950, reproduced in 36 TRANSACTIONS OF THE GROTIUS SOCIETY 56 (1950)

⁷ *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 1 other, 25 June 2024

⁸ *Georgia v. Russia (II)* [GC], no. 38263/08, § 341, 21 January 2021

⁹ *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, 9 July 2025

to some 501 pages, in which the Court subjects the available evidence – summarised in two annexes running to about 2000 pages – to most detailed scrutiny to establish Russia's responsibility for the massive human rights violations that occurred. Not only an important judgment but also an important historic record; even more so in these days of disinformation and misinformation.

What is, in the present context, even more remarkable about this judgment, however, is that – and this to my knowledge was a first in the Court's history - some 26 Member states (plus Canada) intervened before the Court in support of the application made by the Ukraine asking the Court to “hold Russia to account”. In fact, it saw some of the intervening states positively assert that holding Russia to account for its conduct in Ukraine – extra-territorially and, at the time, arguably outside the Court's jurisdiction – was – and here I quote from the Polish Government's submissions as recorded in the judgment “critical to upholding confidence in, and the relevance of, the Convention system as a living instrument capable of responding to the most significant of challenges”.¹⁰

While the just satisfaction aspect of this judgment is currently still pending before the Court, it is worth noting that – in apparent contradiction to the foreshadowed end of international law and the rules based international system - the member states of the Council of Europe, together with numerous others, have taken

¹⁰ § 261, emphasis added

three further important – complimentary steps to hold Russia to account, firmly anchored in international law and respect for human rights:

1. in 2023 it established the Register of Damages for Ukraine which is up and running and has already received more than 100,000 claims in relation to torture, inhumane treatment and sexual violence, destruction of residential buildings and critical infrastructure across the country, as well as immense economic losses suffered by individuals as a result of the aggression of the Russian Federation against Ukraine, and has just opened a new claims category concerning forced displacement outside Ukraine as a result of that aggression;
2. On 16 December 2025, it adopted the Convention establishing an International Claims Commissions for Ukraine to investigate and adjudicate on allegations of war crimes, crimes against humanity and genocide in Ukraine. This Convention was signed by 35 States and by the European Union on the day of adoption or shortly after; and
3. In June 2025, a bi-lateral Agreement for the creation of a Special tribunal to prosecute the crime of aggression against Ukraine was signed by the CofE and Ukraine. In fact, it was announced this January that the EU and the Council of Europe have signed an agreement on the financing of an advance team, to prepare the institutional, logistical and organisational foundations for this Special tribunal.

At the same time, the Court remains as busy as ever. Last year alone, the judges of the Court, supported by some 600 Registry lawyers, decided some 38,573 applications received in 40 languages, including some 7,011 of them by judgments.¹¹ This leaves the Court with a backlog of pending applications of 53,450 applications of which almost 56% relate to only three states: Türkiye with 18,464 pending applications, Russian legacy cases with 7,177 applications pending and Ukraine with some 4,004 applications pending.

By contrast, there are currently only 139 cases pending against the UK (that is the lowest rate of any Member State, namely 0.04 per 10,000 inhabitants). In my experience, the vast majority of cases against the UK are likely to be declared inadmissible or struck out and only very few will be communicated to the Government and even fewer still will lead to a finding of a violation. Last year, of the 397 applications against the UK decided, only 12 led to a judgment on the merits and only four to a finding of one or more violation.

However, none of these violation judgments seemed to have captured the public's attention and even less led to any criticism; two concerned the criminal limb of Article 6, one found a breach of Article 8 in the context of disclosure by the police in the context of enhanced employment vetting¹² and the last, a Committee judgment based on well-established case-law, found a violation of

¹¹ European Court of Human Rights, [Annual Report 2025](#)

¹² *A.R. v United Kingdom*, no. 6033/19, 1 July 2025

Article 10 in relation to the recoverability of success fees where proceedings are brought against a media defendant by a claimant who has entered into a conditional fee arrangement.

Furthermore, just in the UK context, the Court, in judgments finding no violation, the Court

1. – for the first time - took the opportunity to grapple with the very topical and, some might say, timely problem of interference by hostile actors in democratic elections – in *Bradshaw and others*;¹³ starting what some have described as a dialogue about where the appropriate balance between freedom of speech, the right to respect for private life and the right to free and fair elections, to name but a few of the rights engaged, falls to be struck; and
2. having considered carefully and given due weight to the debate in Parliament, relevant decisions of the UK Supreme Court and the conclusions of the Committee of Ministers in its supervision of the execution of the judgments in the *Hirst* group of cases, hopefully – in *Hora*¹⁴ - put an end to the prisoner voting debate.

However, despite these – one might have thought – many positive and important aspects of the Court's most recent work, both in the UK and in the wider context of the Council of Europe, the Court has come in for sustained criticism including, in the UK (and it seems

¹³ *Bradshaw and Others v. the United Kingdom*, no. 15653/22, 22 July 2025

¹⁴ *Hora v United Kingdom*, no. 1048/20, 23 September 2025

only in the UK), calls from elected politicians to leave the ECHR altogether.

The currently dominant criticism levelled at the Court – both at domestic and at international level – appears to be that, in the context of irregular migration and extradition, it has – as nine heads of state and government, led by Italy and Denmark, put it in their Open Letter of 22 May 2025 “extended the scope of the Convention too far as compared with the original intentions behind the Convention, thus shifting the balance between the interests which should be protected” and has limited our ability to make political decisions in our own democracies. And thereby affected how we as leaders can protect our democratic societies and our populations against the challenges facing us in the world today”.¹⁵ This complaint was expressly couched in terms of the interpretation of the Convention having resulted in the protection of the wrong people”.

Focussing for a moment on the international debate, I would only note three things about this letter:

1. all nine signatories to this letter represented EU Member States, who were and are bound by detailed EU asylum and humanitarian protection legislation, which reflects and in some aspects goes beyond the requirements of the ECHR,

¹⁵ https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf

and who are subject, first and foremost, to the jurisdiction of the CJEU on these matters;

2. at the same time as this criticism is being levelled against the Court, the EU itself is actively pursuing the aim, an obligation under Article 6(2) TEU, of accession to the ECHR. As a consequence of a request by the EU Commission, submitted on 21 November 2025, an advisory opinion¹⁶ on the compatibility of the revised draft accession agreement with the EU Treaties is, in fact, now pending before the CJEU; and, finally,
3. three of the signatory states to the letter, which also urges the taking of “effective steps to counter hostile states that are trying to use our values and rights against us” had, at the time, and still have, active proceedings pending before the Grand Chamber in relation to the alleged instrumentalisation of migrants by Belarus at their borders.¹⁷ Whatever one may think about the merits of their complaint, the timing of their criticism of the Court puts the Court in a very difficult position and, at the very least, suggests a strange understanding of the rule of law and of protecting the independence of the Court.

¹⁶ Advisory Opinion 1/25, [OJ C, C/2026/275](#), 26.1.2026

¹⁷ *R.A. and Others v. Poland*, no. 42120/2; *H.M.M. and Others v. Latvia*, no. 42165/21 and *C.O.C.G. and Others v. Lithuania*, no. 17764/22, all of which were heard by the Grand Chamber on 12 February 2025.

At Council of Europe level, the process started by this letter has since led to an informal meeting of Justice Ministers in Strasbourg on 10 December 2025, at which:

1. the ministers adopted a decision to charge the Steering Committee for Human Rights (CDDH) to prepare elements for a political declaration, to be adopted at the next regular ministerial meeting in Chişinău in May 2026; and
2. 27 States, including the nine authors of the letter as well as the UK and, to the surprise of many, Ireland, adopted a Joint Statement asking amongst others for:
 - a. A rebalancing of the rights to family life of the individual under Article 8 ECHR and the legitimate interest of the state to “ensure that we no longer see instances where foreigners convicted of serious crime, including serious violent crime, sexual assault, organised crime and human and drug trafficking, cannot be expelled” – not, in fact, the language of balance at all; and
 - b. constraining the scope of “inhuman and degrading treatment” under Article 3, “to the most serious issues in a manner which does not prevent State Parties from taking proportionate decisions on the expulsion of foreign criminals, or in removal or extradition cases” – language which, on its face, appears difficult to reconcile with the absolute nature of Article 3.

Due to the very short timetable, this process has already led to the production by CDDH – on 6 January - of an Issues Paper for inclusion in any such political declaration,¹⁸ discussed at a three day meeting 13-15 January, leading in turn to a Preliminary Draft for the outcome document, dated 30 January 2026,¹⁹ which is being discussed as we speak, at a CDDH meeting taking place in Strasbourg now (25-27 February). A further CDDH meeting is scheduled for 10-12 March and CDDH's deadline for completing its work is 22 March 2026.

While it is increasingly clear that different states have different objectives in this process and that different states are driving different aspects of the debate, it is most striking that none of the documents I have seen to date have produced any clear – and, even less, common or agreed - indication let alone evidence as to which aspect of the operation of the Convention and/or which aspect of the Court's case-law it is which is, in fact, preventing states from operating an effective migration enforcement regime, other than in certain isolated cases, or from substantially reducing the numbers of migrants coming to their countries or substantially increase the number of migrants being removed or deported.

And numbers, large numbers, it appears, do matter in the political discourse. Just by way of example, in the UK context, of course, the Conservative Party, at their last party conference, was said to be

¹⁸ [CDDH\(2026\)01](#)

¹⁹ [CDDH\(2026\)04](#)

aiming to remove some 150,000 individuals per year or 750,000 over the term of a Parliament. A number which was recently “topped” by the plans announced by Reform UK at the beginning of this week who confirmed that, if they were to form the next Government, they would seek to remove 24,000 individuals per month or 288,000 per year.

However, as the Commissioner for Human Rights, Dr Michael O’Flaherty, who gave last year’s annual lecture, confirmed in his remarks to the meeting of the CDDH yesterday “part of the confusion stems from a lack of clarity about the actual nature and scale of the issues raised by Member States. To foster an evidence-based discussion at the Committee of Ministers, it is important to provide contextual information, illustrative examples and explanations regarding empirical situations you are seeking to address”.²⁰

In light of the general international climate which I referred to at the outset as well as some of the states involved in this debate and the stated aim of some of those, at least in the UK, who are most vocal in their criticism of the ECHR, it is perhaps not surprising that there is some concern, in particular, in relation to any attempt to weaken or water down the protection provided by Article 3, the absolute prohibition of inhuman and degrading treatment and punishment, including the principle of *non-refoulement*. Once it has been accepted that Article 3 may not be as absolute as was hitherto

²⁰ CommHR(2026)14

assumed in relation to one category of the “wrong people”, what future changes or adjustments might be sought.

This concern – or better suspicion – is, of course, not helped by the fact that, with the exception of a few official observers, including the European Network of National Human Rights Institutions, of which of course this Commission is a member, and the Council of Bars and Law Societies of Europe, those representing civil society feel largely and deliberately excluded from the CDDH process. Documents setting out Member States Comments on the evolving draft Text are not made public (though their existence is acknowledged in the draft Agendas which are) and, as Dr Andrew Forde noted in his address to the Irish Council for Civil Liberties yesterday “participants of the structured meetings in Strasbourg have literally been instructed not to share working documents”. That said, I am aware that in the UK context at least, there has been some engagement by those involved in the CDDH process with civil society and with academia; which is to be commended.

This may also go some way to explaining why it appears that some Member States have more fundamental difficulties with any proposals affecting Article 3; in this context the statements entered into the minutes of the EU Council of 18 February 2026 by France and Spain are particularly noteworthy. The Council was debating amending Regulation 2024/1348 “establishing a common procedure for international protection in the Union” as regards the concept of safe third country and both states

expressed their disagreement with the amendments reflecting *inter alia* their concern for the need to ensure compliance with the principle of non-refoulement enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights.²¹

In any event, as the UK Supreme Court confirmed in its *Rwanda* judgment, the *non-refoulement* principle does not, primarily and certainly not solely, derive from Article 3 ECHR. It is a core principle of international law, to which the United Kingdom government has repeatedly committed itself on the international stage, consistently with this country's reputation for developing and upholding the rule of law",²² and which was given effect to by numerous other international conventions, including the Refugee Convention and the UNCAT, to which the UK is a party and, possibly, also by customary international law.

That said, there has been some suggestion that it is the Court's Article 3 case law in relation to (a) prison conditions and the application of the *Muršić*²³ and/or (b), following the judgment in *Paposhvili v Belgium*, its caselaw in relation to the deportation of seriously ill persons, which is the root cause of some of the concerns.

²¹ [Doc 6177/1/26 REV 1 ADD 1](#)

²² *AAA (Syria) & Ors, R (on the application of) v Secretary of State for the Home Department* [2023] UKSC 42, § 26

²³ *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016

I, of course, accept that there may be differences of opinion and room for constructive criticism of those decisions and of whether the Court has adopted the right approach in those cases.

That said, however, as far as I have been able to ascertain,

1. there have, in fact, been no decisions of the Strasbourg Court to date in which the application of the *Muršić* criteria, in the removal, deportation or extradition context, to a prison or detention facility in a receiving state have led the Court to find that such a removal, deportation or extradition would amount to a breach of Article 3. In fact, as a recent Belgian Expert Report²⁴ has identified (and implicitly criticised), in the context of immigration detention in a respondent state itself, the Court has already made clear that in determining whether the minimum threshold of severity has been reached, the Court would have to consider “the general context in which those facts arose [and would] thus bear in mind, together with other factors, that the undeniable difficulties and inconveniences endured by the applicants stemmed to a significant extent from the situation of extreme difficulty confronting the [...] authorities at the relevant time”;²⁵ and
2. other than the Grand Chamber judgment in *Savran*,²⁶ in which no violation of Article 3 was found in the case of the

²⁴ [“How strict is the European Court of Human Rights in migration cases?”](#), drafted by Ellen Desmet (Ghent), Eva Sevrin (Leuven/Ghent) and Thomas Spijkerboer (Ghent), 18 February 2026

²⁵ *Khlaifia and others v Italy* [GC], no. 16483/12, § 185, 15 December 2016

²⁶ *Savran v Denmark* [GC], no. 57467/15, 7 December 2021

deportation of a Turkish national suffering from paranoid schizophrenia, I am not, in fact, conscious of another case post-*Paposhvili* in which the Court has since been required to consider the legality under Article 3 of a deportation of a seriously ill person. In any event, in its judgment in *Savran* the Court made again clear that Article 3 protection is only triggered where the evidence adduced was “capable of demonstrating that there are substantial grounds” for believing that as a “seriously ill person”, the applicant “would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy”.

This inability to pin down the “problem” with the Court’s substantive case-law which the political declaration is intended to address is, perhaps, also explained by the figures.

After all, as the Court’s own statistics, published in its “*Focus on: Immigration*” factsheet of January this year, confirm, out of the ca 53,000 applications pending before the Court only 870 concern immigration (1.5%). Of these, the vast majority will be found inadmissible and only a minority will end in a judgment and even fewer in an adverse judgment. Of the 430,000 applications processed during the last ten years, only 7,387 (2%) concerned

immigration and, of these, only ca. 450 applications led to a finding of a violation.

In relation to the UK, this was also confirmed by the research of the Bonavera Institute at Oxford University set out in their Report, entitled “The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate” and published on 4 September 2025.

That report highlighted, rightly, the following important facts:

1. The Convention contains no express provision preventing the removal of non-citizens. In fact, I would add that the Court goes out of its way to reiterate at every opportunity that:
 - a. “a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country”;²⁷ and
 - b. The right to political asylum is not contained in either the Convention or its Protocols and the Court does not itself examine the actual asylum application or verify how the States honour their obligations under the 1951

²⁷ *M.A. v Denmark* [GC], no 6697/18, 9.7.2021, §131

Geneva Convention or, where applicable, European Union law;

2. Since 1980, i.e. in the last 45 years, there have only been 29 ECHR judgments against the UK concerning the removal of foreign nationals from the UK;
3. in 16 of these cases, the Court found that the proposed deportation or extradition would not breach the Convention and could, therefore, go ahead;
4. In 13 cases, the Court found that the deportation or extradition would violate the Convention. However, only in four (4) out of these 13 was the Court concerned with Article 8, the right to respect for private or family life; and
5. In the same period, there have only been three (3) judgments in which other aspects of the UK Immigration Rules have been found to violate the Convention.

In fact, the Court has repeatedly stated, including prominently in cases against the UK, that it would not substitute its conclusions for those of the domestic courts, which had thoroughly assessed the applicants' personal circumstances, carefully balanced the competing interests and took into account the criteria set out in its case law, and reached conclusions which were neither arbitrary nor manifestly unreasonable²⁸.

²⁸ *Ndidi v United Kingdom*, no 41215/14, 14.9.2017, § 76 and *Otite v United Kingdom*, no. 27.9.2022, § 42

In these case, the Court has also repeatedly refused to accede to submissions - made to it by applicants and/or third parties - to the effect that the already existing – and very detailed - UK provisions governing how immigration tribunals should assess Article 8, as introduced by the Immigration Act 2014,²⁹ and the 2014 changes to the Immigration Rules, paragraphs A398 to 399A, were such as to, in effect, prevent a meaningful proportionately assessment and, therefore, amount to a systemic violation of Article 8 rights”.³⁰

Finally, in its 2022 judgment in *Otite*, having found that the Upper Tribunal had not conducted the necessary balancing exercise by reference to the case-law of the Court but had limited its consideration to the “unduly harsh” and “very compelling circumstances” tests set out in the 2014 Act and Rules, the Court, nevertheless, conducted its own balancing exercise and concluded that his deportation would not violate the Convention.

If the problem is not, in fact, the substantive case-law of the Court in Strasbourg the question arises whether the real problem may not lie elsewhere. As I noted in a lecture I gave last year,³¹ in this respect it may be worth noting that:

1. as the Bonavera Institute report noted, there is, in fact, no up-to-date published data on domestic human-rights based appeals against deportation decisions generally and no data

²⁹ Which entered into force on 28 July 2014

³⁰ *Otite* § 33

³¹ Harry Weinrebe lecture 2025, BIICL, 14 October 2025:

https://www.biicl.org/documents/13103_harry_weinrebe_lecture_2025_-_tim_eicke_kc_-_final.pdf

at all on the number of human rights based appeals which, even where successful at first instance, have been overturned on appeal. The last available general data only runs to June 2021. For what it is worth, the authors note that that data shows that between April 2016 and June 2021, while there were some 922 successful human rights appeals to the first-tier tribunal – as they note: without any indication whether that might have been overturned on appeal – at the same time some 26,091 foreign national offenders were deported; and that

2. On the other hand, Lord Wolfson KC, the Shadow Attorney General, in his “Advice to the leader of the Conservative Party” of 2 October 2025 records that, at the end of March 2025, there were 78,745 asylum applications waiting for an initial decision as well as 50,976 open asylum appeals before the first-tier tribunal.

Whatever the difficulty with identifying the substantive issues with the Court’s case-law, I note with interest that the CDDH has, in passing, identified a potential procedural issue which might also provide a legal answer – though this may not be politically acceptable. In § 21 of its “Preliminary Draft Text for the Outcome Document Containing Elements for a Political Declaration” of 30 January 2026,³² the CDDH noted, rightly, that where a Contracting State considers that its domestic courts have misapplied the Court’s jurisprudence, there is no avenue whereby a State can

³² [CDDH\(2026\)04](#)

contest the outcome before the Court”. That is, of course, at least partly, true.

The CDDH s answer to this dilemma is to suggest, it seems to me uncontroversially, that States may, ..., bring forward detailed national measures on how relevant Convention rights, including Articles 3 and 8, should be applied in their national legal system in the specific context of expulsion, removals or extradition”.

The more pragmatic answer – though potentially politically difficult at least in some Member States like the UK though not in others – is, of course, Protocol 16. This Protocol, which was a product of the Brighton Ministerial Meeting at the end of the last UK presidency of the Council of Europe and has now been ratified by some 26 States, in design and in practice, enables the state, at least through its designated highest courts a tribunals”, to raise the correctness of a (proposed) approach by the domestic courts before the Strasbourg Court in the context of a preliminary and non-binding advisory opinion.

Let me very briefly turn to what appears to be an issue which, while perhaps not unique to the UK, appears particularly pronounced in the UK and that is the issue of widespread misinformation, whether deliberate or inadvertent.

While, at the international/European level, in many ways the main difficulty is that those critical of the Court are unable to identify the problem with the Court's substantive case-law for which they are seeking a solution with any degree of specificity leading on occasion to a form of shadow boxing between civil society proponents of the opposing views, the Bonaverio Report identified the widespread misreporting of the ECHR and of immigration cases involving the ECHR in the UK as a very real and dangerous problem.

Over a period of 6 months, from 1 January to 30 June 2025, the authors of the Report systematically monitored media reports in the UK that mentioned the ECHR and found that over 75% of news and commentary reviewed focused on its relationship with immigration control, in particular the issue of human rights-based appeals against deportation by foreign national offenders”.

They expressed their findings in summary as follows:

Much of this reporting, and the public debate that followed, primarily focused on a number of highly-publicised cases decided by judges in the lowest tier of the immigration tribunals.

- Three forms of misreporting of immigration tribunal cases emerged:

1. Reporting of tribunal cases that, at the time of reporting, were no longer valid because they had already been overturned on appeal by a higher court.

2. Reporting about the arguments made by lawyers representing those challenging their deportation, implying that those arguments were decisive to the outcome of the case when in fact they were not accepted by the judges.

3. Presenting misleading accounts of judges' assessment of evidence, reporting a specific aspect as if it were decisive to the outcome of the case, when this was not in fact the reason for which the case was decided.

- None of the media reports we reviewed attempted to contextualise specific immigration tribunal cases by providing data on the number and outcome of human rights-based deportation appeals. This may [they suggest] reflect the fact that the Home Office does not systematically publish data on human rights-based appeals in deportation cases.”

While the vague assertion of (and consequent acceptance of) the existence of a – not further identified – problem is, of course, also capable of producing a deceptive narrative of a “problem” apparently justifying the search for a solution”, the type of misreporting identified in the Bonavero Report is particularly dangerous”. After all, as they rightly note, it undermines public confidence in our legal system and legal processes, leading to an erosion of trust in the rule of law. It sows division, fosters increased public antipathy towards human rights and polarises public discourse, creating the conditions in which immigration judges are vilified and threatened. It also leads to calls to leave the ECHR based upon inaccurate understandings of the role of the

Convention and the Court”.³³ This, of course, takes us full circle and brings us back to the very concerns addressed in the Report of the House of Lord Constitution Committee and the efforts of the Lady Chief Justice and those partnering with her.³⁴

Where does all of this leave us and are there any signs of optimism which I promised at the outset?

As I have sought to identify, it seems to me that we find ourselves in a moment of tension and even contradiction between two competing schools of thought about how to engage with international law, the ECHR and the rule of law more generally. There are, however, many pointers – and I have sought to identify some of them at least in the European legal space – which indicate a growing reliance and confidence in international law and international courts, rather than an abandonment of them. In fact, I read Prime Minister Carney’s reference to rupture not as a call to turn away from the rule of law but rather a call for middle powers – and, whether we accept it or not, that is what the UK is and how it is perceived – to embrace international law and the rule of law even more and to stop “hiding” behind the traditional hegemon.

If that is right, that gives me hope.

³³ *ibid.* p. 3

³⁴ HL Paper 211, published 20 November 2025 at <https://publications.parliament.uk/pa/ld5901/ldselect/ldconst/211/211.pdf>

However, as you know better than most, the real challenge is and remains to educate and to explain the value and the importance of the rule of law for the benefit of all and to counter any misinformation or disinformation – and to do so in new ways which can reach those outside our “bubble” - both at domestic and at international level – to ensure that there is no – or no further – rule of law backsliding.

In this respect, a lot of groundbreaking work is - perhaps not surprisingly - already being done in Northern Ireland, including by the Northern Ireland Human Rights Commission, the Bar of Northern Ireland, the Law Society and the Lady Chief Justice - to name only a few. I already referred to the fascinating series of talks on the Rule of Law which the Office of the Lady Chief Justice and the Bar are currently organising together but should also confess that I am a huge fan of the video – which I understand accompanies the series - explaining the rule of law, which I have liberally forwarded to friends and colleagues far and wide.

These efforts are hugely important and impactful and should be an inspiration to everyone; they certainly are to me!

Thank you.