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**Troubled Legacies:
The *Northern Ireland Troubles (Legacy and
Reconciliation) Act 2023* and the Thin Line Between
Impunity and Reconciliation**

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Abstract

On 18 September 2023, the UK Parliament adopted the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* to address the legacy of the Northern Ireland conflict and promote reconciliation between communities. However, the *Act* has been heavily criticised for being in violation of the European Convention on Human Rights (ECHR) and was challenged before courts. On the one hand, the Irish government lodged an inter-state appeal against the United Kingdom before the European Court of Human Rights (ECtHR) for the second time since the 1978 judgment on *Ireland v. United Kingdom (I)* (no. 5310/71). On the other hand, the High Court of Belfast declared several provisions of the *Legacy Act 2023* in violation of the ECHR, a decision later upheld by the Court of Appeal. Almost a year after the first adoption, in December 2024, the UK government presented to Parliament a proposal for a Remedial Order, later scrutinised by the Joint Committee on Human Rights. This case note analyses the relevance of the legal challenges against the *Legacy Act 2023*, assessing the impact of these decisions on the process of reconciliation in Northern Ireland as well as the ECHR system of human rights protection.

Keywords

Legacy Act 2023, Northern Ireland, European Convention on Human Rights, European Court of Human Rights, High Court of Belfast, Appeal Court in Northern Ireland.



1. Introduction

On 18 September 2023, the Westminster Parliament adopted the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* (henceforth “*Legacy Act 2023*”) to address the legacy of the Northern Ireland conflict and promote reconciliation between communities. However, this has been heavily criticised both at the national and international level for being in violation of human rights obligations and especially of the rights entrenched in the European Convention on Human Rights (ECHR). A few months after the adoption, the *Legacy Act* was challenged before courts, with the Irish government lodging an inter-state appeal against the United Kingdom^I before the European Court of Human Rights (ECtHR) for the second time since the 1978 judgment in *Ireland v. United Kingdom (I)*.^{II} If the inter-state application is still pending, at the domestic level the High Court of Belfast^{III} and the Court of Appeal in Northern Ireland^{IV} already found the *Legacy Act* in violation of the ECHR. These decisions required the UK government to draft a proposal for a Remedial Order addressing the ECHR violations in the *Legacy Act* that was presented to Parliament in December 2024.^V

This case note seeks to analyse the relevance of the legal challenges against the *Legacy Act 2023* both at the ECHR and domestic levels, assessing the impact of these decisions on the process of reconciliation in Northern Ireland as well as the ECHR system of human rights protection. To do so, the case note first reviews the background leading to the adoption of the *Legacy Act* and outlines the political and legal context of conflict in Northern Ireland and post-conflict settlements. Then, the analysis focuses on the legal challenges against the *Legacy Act 2023*, bringing together the two decisions delivered by the High Court and the Court of Appeal and the pending inter-state application lodged by Ireland against the United Kingdom before the ECtHR. Finally, the Proposed Remedial Order drafted by the UK government^{VI} is addressed, taking into account the respective report adopted by the Joint Committee on Human Rights. The case note ends with a few concluding remarks on the right to truth and reconciliation in Northern Ireland.



2. Background

The conflict in Northern Ireland (the so-called “Troubles”) endured for over thirty years, spanning approximately from 1968 to 1998, and had a dramatic impact on the collective memory of both unionist and nationalist communities^{vii} (Ferguson and Halliday 2020; Edwards 2023). Indeed, the violent acts perpetuated by military and paramilitary groups claimed more than 3,500 lives (most of which civilians) and several thousands of injured people (McKittrick and McVea 2012; McAtackney and Ó Catháin 2024). On 10 April 1998, the UK and Irish governments signed the Belfast Peace Agreement (also known as the ‘Good Friday Agreement’), which established new political institutions and a peculiar system of intergovernmental relations in Northern Ireland (McGarry and O’Leary 2004; Birrell 2012) and reaffirmed the parties’ commitment to peace, human rights and reconciliation (Dickson 2002; Guelke 2004; Bell 2005; Beirne and Knox 2014).

Possible paths to effectively address the legacy of the Troubles have been widely discussed in the scholarship on transitional justice in Northern Ireland (Gilmartin 2021; Maguire 2024),^{viii} also exploring the creation of a “Truth Commission for Northern Ireland” following the South African experience^{ix} (Lundy and McGovern 2008). Past efforts of truth-seeking included judicial public inquiries into particularly controversial events (e.g., the Bloody Sunday Inquiry);^x police investigations of past violence as well as Police Ombudsman investigations into allegations of police malfeasance (Lundy 2009); civil actions (Mallory, Molloy, and Murray 2020) and other court-based proceedings (Anthony and Moffett 2014; McQuigg 2023); a limited immunity scheme (Mallinder et al. 2015; Leahy 2023); and a small number of conflict-related prosecutions (Bryson and McEvoy 2024). Interestingly, the process of transitional justice in Northern Ireland appeared to be *sui generis* insofar as it occurred ‘within a State structure with at least a formal commitment to liberal democracy’ (Campbell and Aoldin 2003, 872), whereas much of the literature on transitional justice focused on those processes unfolding in previously authoritarian regimes (Teitel 1997; 2003; 2005).

After several attempts at systemising the variety of these transitional justice mechanisms that led to more than two years of negotiations, in 2014 the political parties in Northern Ireland and the Irish and British governments signed the Stormont House Agreement (SHA). The Agreement encompassed an entire section dedicated to ‘The Past’ that fostered the



establishment of a Historical Investigations Unit, an Independent Commission on Information Retrieval, and an Implementation and Reconciliation Group.^{xi} Despite its wide political and popular support, the implementation of the SHA was delayed by the Brexit referendum and subsequent negotiations of the Withdrawal Agreement and Northern Ireland Protocol (Bonifati 2019; Connolly and Doyle 2021; Fabbri 2022). The issue of the legacy of the Troubles returned to the news in 2021,^{xii} when the former British PM Boris Johnson advocated for the adoption of a legislation to deal with the past in Northern Ireland, proposing an effective amnesty for those accused of killing or maiming people during the conflict. The proposed bill was opposed by all parties in Northern Ireland, including the two governing parties, i.e., Sinn Féin and the Democratic Unionist Party, arguing that the bill would have denied victims' families the justice they deserved. Moreover, the Joint Committee on Human Rights warned that the bill contained several profiles of incompatibility with the European Convention on Human Rights, specifically Art. 2 (right to life) and Art. 3 (prohibition of torture). Nevertheless, the UK government presented the bill to the House of Commons on 16 May 2022 and the *Northern Ireland Troubles (Legacy and Reconciliation) Act 2023* was later adopted on 18 September 2023, entering into force on 1st May 2024.

The international response to the *Legacy Act 2023* has immediately been highly critical. On 3 May 2024, the Human Rights Committee asked the UK 'to repeal or reform the [Legacy Act] and to adopt proper mechanisms with guarantees of independence, transparency, and genuine power of investigation that discharge the State party's human rights obligation and delivers truth, justice, and effective remedies, including reparation to victims of the Northern Ireland conflict'.^{xiii} Similar stances demanding substantial reforms have been taken by the UN General Assembly, the UN Special Rapporteurs, the UN High Commissioner for Human Rights, and the Human Rights Commissioner of the Council of Europe.

3. The Legal Challenges

The compatibility of the *Legacy Act 2023* with the European Convention on Human Rights has been verified both at the domestic and the supranational levels. If the inter-state appeal brought forward by Ireland against the UK is still pending before the ECtHR, the High Court of Belfast and the Court of Appeal in Northern Ireland already found several



provisions of the *Legacy Act 2023* to be in breach of the ECHR. This section first addresses the inter-state appeal and then domestic challenges, to link them more closely to the analysis of the proposed Remedial Order drafted by the UK government.

i. The ECHR Level

In January 2024, the Republic of Ireland lodged an inter-state appeal against the United Kingdom for the second time after the 1978 ECtHR judgment on *Ireland v. United Kingdom (I)*, claiming that some provisions of the *Legacy Act 2023* breached the European Convention on Human Rights (Holder and Forde 2023; Castellaneta 2024). Although the application is still pending, it is interesting to review the similarities and differences with the 1978 inter-state appeal to better frame the current case. In *Ireland v. United Kingdom (I)* (O’Boyle 1977; Donahue 1980), the ECtHR held that the five interrogation techniques^{xiv} adopted by UK officials during the conflict constituted practices of inhuman or degrading treatment, and as such they violated Art. 3 ECHR on the prohibition of torture. However, the Court also clarified that ‘said use of the five techniques did not constitute a practice of torture within the meaning of Article 3’ (ECtHR, no. 5310/71, p. 86). Moreover, according to the Court, the conflict in Northern Ireland could be defined as a ‘public emergency threatening the life of the nation’ (ECtHR, no. 5310/71, p. 87), and confirmed that the requirements under Art. 15 ECHR on derogation in time of emergency were met by the UK. As a result, the derogations from Art. 5 (right to liberty and security) and Art. 6 (right to a fair trial) did not exceed the limits provided by Art. 15, and that no discrimination contrary to Art. 14 ECHR (prohibition of discrimination) occurred in those circumstances. The Court’s decision raised criticisms not only by human rights activists and practitioners but also legal scholars, who argued that ‘an opportunity was missed [...] to set the threshold for what was acceptable treatment of detainees at a much higher level’ (Dickson 2012, 363). On its part, Ireland requested a revision of the 1978 judgment, but this was rejected in 2018.^{xv} After *Ireland v. United Kingdom (I)*, several individual applications were brought before the European Court of Human Rights, even though the successes in Strasbourg came in the final stages of the Troubles and had only a limited influence in the conflict-resolution process (Dickson 2012).

The 2024 inter-state appeal differs from its 1978 predecessor for three reasons. First, from a procedural perspective, the 2024 application is based on the new procedures introduced by Protocol no. 11, which entered into force in 1998. The new ECHR system



eliminated the option for Member States of the Convention not to accept the jurisdiction of the ECtHR, introduced the possibility for individual appeals, and abolished the former European Commission of Human Rights which served as a ‘filter’ for the applications before the Court. Therefore, the pending inter-state appeal will not experience the involvement of the Commission, as in the 1978 counterpart.

Second, from a substantive perspective, in *Ireland v. United Kingdom (III)*, Ireland not only claimed the violation of Articles 2 and 3 of the ECHR, i.e., two ‘absolute rights’ within the ECHR system (Bartole, De Sena, and Zagrebelsky 2012; Schabas 2015), but raised also issues related to systemic violations of the ECHR (Cannone 2018; Lemmens and Van Drooghenbroeck 2023). Specifically, these concerned the relationship between the Convention and a national policy on criminal justice that invoked the need to grant amnesty or immunity for reconciliation purposes. Moreover, the 2024 application brought to the centre stage the so-called “right to truth” for victims of conventional rights violations. Although not explicitly recognised in the ECHR, the right to truth has already found its way into the ECtHR jurisprudence (Sweeney 2018) and could be further consolidated in this case.

Finally, from a temporal perspective, the Court of Strasbourg, in *Ireland v. United Kingdom (III)*, will address a post-conflict context. Contrary to the 1978 judgement that was delivered during the Troubles, the 2024 application occurred in a very different context. Since *Ireland v. United Kingdom (I)*, Northern Ireland experienced the signature of the Good Friday Agreement in 1998, the adoption of the *Human Rights Act 1998*, and the withdrawal of the UK from the European Union in 2016, the latter being something that none of the parties involved in the conflict resolution could have imagined. In these changed circumstances, the ECtHR might find not only violations of the rights protected in the Convention but also of the Good Friday Agreement, with the possibility to ascertain the scope of the margin of appreciation granted to Member States when designing their reparation policies for victims (Castellaneta 2024).

For what concerns the merit of the 2024 inter-state appeal, Ireland holds that, by adopting the *Legacy Act 2023*, the United Kingdom violated Art. 2 (right to life), Art. 3 (prohibition of torture), Art. 6 (right to a fair trial), Art. 13 (right to an effective remedy), and Art. 14 (prohibition of discrimination) of the ECHR. As mentioned, Articles 2 and 3 ECHR are considered absolute rights insofar as they are essential to guarantee human dignity^{XVI} and cannot be derogated under Art. 15 ECHR. Furthermore, the conditional immunity granted



in some provisions of the *Legacy Act 2023* to members of the British armed forces, as well as amnesty to those who collaborated with investigating authorities, would be in breach of the right an effective remedy, since they would prevent the determination of responsibilities and the delivery of justice to the victims. Indeed, these legislative provisions would guarantee immunity to former members of the British army for more than 1000 unresolved murders, precluding the start of new investigations. A further element is provided by the Independent Commission for Reconciliation and Information Recovery (ICRIR), the competent body identified by the *Legacy Act 2023* to conduct investigations and decide whether to grant immunity or defer the case to the public prosecutor's office. Since its members are appointed by the UK government, the ICRIR would not guarantee an independent investigation and ascertainment of the truth, and this would further affect the process of reconciliation in Northern Ireland. Finally, the sections of the *Legacy Act 2023* blocking the start of new civil actions and providing the dismissal of cases lodged after 17 May 2022 would be contrary to the ECHR system of guarantee centred on the States' obligation to recognise to each individual subject to their jurisdiction the rights and freedoms entrenched in the Convention.

Although the application is still pending, legal scholars have already observed that the UK government will meet several difficulties in supporting the compatibility of the *Legacy Act 2023* with the European Convention on Human Rights, especially considering that it will be highly probable that the Court of Strasbourg will find systemic violations of the Convention (Castellaneta 2024). Finally, it is worth mentioning that *Ireland v. United Kingdom (III)* follows a recent trend related to the more frequent use of inter-state appeals, an instrument that is founded on the concept of collective guarantee within the ECHR system and is functional to the protection of the European public order.^{xvii} Despite its limited use, the increasing number of inter-state appeals before the ECtHR can be interpreted as emblematic of Member States' trust in the Convention and in the Court's role of ascertaining its violations (Palchetti 2021; Risini 2018), especially in cases of armed conflicts or territorial disputes (Leach 2021).

ii. The Domestic Level

Since the adoption of the *Human Rights Act* (HRA) in 1998 and its entry into force in 2000 (Bellamy 2011; Burlington 2017), the United Kingdom incorporated the ECHR in its legal order, 'making it an immediate source of individual rights against national authorities



and, in cases of violations, a source for remedies before national courts' (Besson 2008, 32). Under Section 19 of the HRA, the Minister proposing a bill to the Parliament must provide a declaration of compatibility with the Convention. Regarding the *Legacy Act 2023*, such a declaration was delivered by the Secretary of State for Northern Ireland, who confirmed that in his view the provisions of the bill were compatible with conventional rights.^{xviii}

After its entry into force, several applicants challenged the compatibility of multiple provisions of the *Legacy Act 2023* with the ECHR, i.e., Art. 2 (right to life), Art. 3 (prohibition of torture), and Art. 6 (right to a fair trial). On 28 February 2024, in *Re Dillon and Others*,^{xix} the High Court of Belfast found several sections of the *Legacy Act 2023* to be incompatible with the ECHR and issued declarations of incompatibility under section 4 of the *Human Rights Act 1998*. Specifically, the provisions providing for conditional immunity and prohibiting criminal enforcement actions^{xx} were found in violation of Articles 2 and 3 ECHR, whereas the exclusion of material provided to or produced by the Independent Commission for Reconciliation and Information Recovery being used as evidence in other cases (e.g., civil or coronial proceedings)^{xxi} was deemed incompatible with Articles 2 and 6 ECHR. Moreover, a violation of the right to a fair trial was found regarding the retrospective bar to the continuation of all Troubles-related civil actions brought between the first reading of the bill and the date it came into force.^{xxii} The same applied to the retrospective validation of defective interim custody orders and the bar of civil actions based on those defective interim custody orders.^{xxiii} In a powerful passage, the High Court argues that 'there is no evidence that the granting of immunity under the 2023 Act will in any way contribute to reconciliation in Northern Ireland, indeed, the evidence is to the contrary' ([2024] NIKB 11, § 187).

The High Court's judgment also went beyond the compatibility of the *Legacy Act 2023* with the ECHR and found some provisions to be in violation of the *Windsor Framework* (WF), the agreement regulating the specific terms of the UK's withdrawal from the EU to be applied in Northern Ireland. According to the High Court, it is relevant to address the violations of the *Windsor Framework* because 'the effect of any breach established results in the disapplication of the offending provisions' ([2024] NIKB 11, § 518). In this respect, the Court clarified that pursuant to Section 7A of the *European Union (Withdrawal) Act 2018*, the *Framework* has primacy over domestic legislation, and any violation should result in the disapplication of the legislative provisions in question. Regarding the *Legacy Act 2023*, the



High Court found that the provisions relating to the immunity from prosecution and the bar to the continuation of all Troubles-related civil actions^{xxiv} were in breach of Art. 2 *Windsor Framework*. Indeed, the Court recalled that Art. 2 requires the UK to prevent any diminution of rights for Northern Irish residents in the aftermath of the UK's decision to withdraw from the European Union. Since these provisions would constitute such a diminution of rights and guarantees, the Court held that these had to be disapplied.

The High Court's decision was appealed by both the UK government and the applicants to the Court of Appeal in Northern Ireland, that delivered its judgement on 20 September 2024.^{xxv} In this decision, the Court of Appeal confirmed what already concluded in the High Court's judgement, and found additional aspects of the *Legacy Act 2023* to be in violation of the Convention, in relation to which the Court issued declarations of incompatibility under the *Human Rights Act 1998*. In particular, the Court of Appeal found section 43(2) of the Act, barring all future Troubles-related civil actions, to be incompatible with Art. 6 ECHR. The Court also found additional violations of Articles 2 and 3 ECHR regarding some aspects of the *Legacy Act's* disclosure regime related to sensitive material, and the lack of provision in the *Legacy Act 2023* for effective next of kin participation, especially in the form of legal aid for investigations being carried out by the Independent Commission for Reconciliation and Information Recovery.

The Court of Appeal also confirmed the *Legacy Act 2023's* violations of the *Windsor Framework* already held by the High Court and clarified an aspect that was not raised at first instance, namely that Art. 2(1) of the WF had direct effect ([2024] NICA 59, § 310(a)). Another interesting element related to the compatibility of the *Legacy Act 2023* with EU law concerns the obligations deriving from Art. 11 of the Victim's Directive (EU Directive 2019/29/EU).^{xxvi} Indeed, the Court of Appeal found there has been a diminution of the victims' right to request a review of a decision not to prosecute, and as such the *Legacy Act 2023* was in breach of an EU Directive having direct effect. Therefore, the judges concluded that 'the correct remedy shall be disapplication in relation to the conditional immunity provisions as these are covered by the Victims' Directive' ([2024] NICA 59, § 310(d)).

Following the decisions of the High Court and Court of Appeal, the UK government drafted a proposal for a Remedial Order to address the human rights deficiencies and incompatible provisions identified by the two courts and, in parallel, is currently seeking



permission to appeal some aspects of the Court of Appeal's Judgement to the UK Supreme Court.

4. The Proposed Remedial Order

Under Section 10 and Schedule 2 of the *Human Rights Act 1998*, incompatibilities with the Convention may be removed by adopting a remedial order. In the UK legal system, remedial orders are a form of secondary legislation and are used to amend primary or secondary legislation, particularly in response to declarations of incompatibility issued by courts under Section 4 of the HRA (Leigh and Lustgarten 1999). After the courts' decisions, the UK government drafted a Proposed Remedial Order that was later presented in December 2024 to Parliament pursuant to paragraph 3(1) of Schedule 2 HRA. The Proposed Order sought to remedy all the incompatibilities previously found by the High Court of Belfast and one of the incompatibilities found by the Court of Appeal in Northern Ireland. Specifically, the Order removed the provisions related to the conditional immunity scheme and the prohibition on criminal enforcement actions (Art. 2 Proposed Order); removed the ban on using evidence provided to or produced by the Independent Commission for Reconciliation and Information Recovery in civil proceeding and inquests (Art. 3 Proposed Order); removed the bar on new and existing civil actions relating to the Troubles (Art. 4 Proposed Order); removed the provisions seeking to retrospectively validate defective interim custody orders and prevent civil claims for compensation in relation to them (Art. 5 Proposed Order); and made several amendments to other enactments consequential to the previous changes (Art. 6 Proposed Order). However, the Proposed Remedial Order did not seek to resolve two incompatibilities found by the Court of Appeal, namely the effective next of kin participation (including legal aid), and the disclosure of sensitive information. This is due to the fact that the UK government is currently seeking to appeal these two declarations of incompatibility to the UK Supreme Court.

Under Standing Order No. 152B,^{xxvii} the Joint Committee on Human Rights is required to scrutinise any remedial order made under the *Human Rights Act 1998* and report its findings to Parliament within 60 sitting days of the proposal for remedial order. In January 2025, the Joint Committee launched an inquiry and collected written evidence by experts and human rights bodies and NGOs such as the Northern Ireland Human Rights Commission, the



Committee on the Administration of Justice (CAJ), Relatives for Justice, and Amnesty International UK.^{xxviii} Overall, the report of the Joint Committee concluded that the Proposed Remedial Order would achieve the government's stated intention of rectifying the declarations of incompatibilities issued by the High Court and one of those issued by the Court of Appeal.^{xxix} Nevertheless, the Joint Committee identified three aspects that should be improved by the UK government before the Remedial Order is laid in draft. First, the Committee argued that the government has not articulated its 'compelling reasons' under Section 10(2) HRA with sufficient clarity, and as such these do not provide a satisfactory reassurance to Parliament and the public that the UK government has 'fully grappled with the issue' (Joint Committee on Human Rights 2025, 1). Second, the report raised the concern over the fact that the Proposed Remedial Order did not address the declaration of incompatibility issued by the Court of Appeal regarding Section 45 of the *Legacy Act 2023* on police complaints. The Joint Committee observed that the UK government has not clarified why Section 45 was not addressed and that is unclear whether this is a section subject to appeal to the UK Supreme Court. If it is not being appealed, the Committee suggested that the government should repeal Section 45 in accordance with its approach to Section 41. Finally, the report recalled that 'victims, their families, and all the communities affected by the Troubles deserve greater clarity about the timetable of the Government's plans to finally address Legacy issues' (§ Conclusion, Paragraph 125), and reiterated that it is of utmost importance to fully implement the ECtHR decisions on the *McKerr* group of cases,^{xxx} after more than 20 years. This group of cases was brought before the Court of Strasbourg claiming the UK's failures to properly investigate deaths which had occurred during security operations (or where the collusion of State forces was suspected) in Northern Ireland in the 1980s and 1990s (Anthony 2005). The full execution of these judgments was set back by the *Legacy Act 2023*, since the *McKerr* cases were affected by the prohibition on the continuation of Legacy inquests which had not reached an advanced stage. Although the government has committed to restarting Legacy inquests by way of primary legislation,^{xxxi} the Committee of Ministers of the Council of Europe has expressed concerns about the UK's measures to address the legacies of the Troubles in Northern Ireland, and these would require more than the mere restarting of investigations.^{xxxii}



5. Concluding Remarks

If it is true that peace and human rights are the pillars of the Convention, it could also be argued that there is no peace without reconciliation, and there is no reconciliation without truth and justice. In its current form, the *Legacy Act 2023* would constitute a barrier not only to the achievement of peace and reconciliation in Northern Ireland but also to the right to truth (Clenaghan 2023; Gallagher 2024a; 2024b; McKinney-Perry 2024). Under international human rights law, the expression “right to truth” describes several enforceable rights that empower the next of kin to learn the truth about a family member’s fate (Stamenkovikj 2021). This right derives its legal basis as an enforceable right primarily from two underlying categories of rights protection, i.e., the prohibition of inhuman treatment and the right of access to justice (Groome 2011). In its direct expression as an explicit declaration, or in its indirect form as the obligation to conduct investigations on human rights violations, the right to truth has already found its way into international law and transitional justice (Klinkner and Davis 2019). This occurred with the adoption of Art. 32 of the First Protocol to the 1949 Geneva Convention, the entry into force of the UN International Convention for the Protection of All Persons from Enforced Disappearance in 2006, and the adoption of Resolution 12/12 of the UN Human Rights Council in 2009.^{xxxiii} Its importance has also been confirmed by transitional human rights jurisprudence and especially by the Inter-American Court of Human Rights (IACtHR). In particular, the Court has argued that the right to truth is vital to protect human rights and that democracy should require the affirmation of such right not only in cases of individual human rights violations, but also guarantee the right to truth to the wider community of citizens (Pasqualucci 1994). This has become especially relevant when deciding on legislative measures related to amnesties in cases of gross human rights violations, such as the amnesty introduced by a Brazilian law regarding cases of forced disappearance during the regime and that would have prevented the development of adequate investigations.^{xxxiv}

On its part, in *Cyprus v. Greece*,^{xxxv} the ECtHR implicitly framed the right to truth along the two categories of rights previously recalled, finding the violation of Art. 3 (prohibition of torture) and Art. 13 (right to an effective remedy). According to the Court, Turkey’s persistent failure to account for the missing family members constituted a ‘continuing violation of Article 3 of the [Convention] with respect to the relatives of the Greek-Cypriot



missing persons' (*Cyprus v. Greece*, par. 155). Similarly, the Court concluded that Turkey's failure to provide Greek-Cypriots with adequate remedies to contest interference with their rights under Article 8 of the ECHR and Article 1 of Protocol 1 constituted a violation of Article 13 (*Cyprus v. Greece*, par. 192). In this respect, the decision of the ECtHR on *Ireland v. United Kingdom (III)* could further consolidate the recognition of the right to truth in the ECHR system of human rights protection. In the past, the European Court of Human Rights has adopted an approach similar to the IACtHR by providing for procedural obligations in recognising substantive rights (Fabbrini 2014). For instance, in *Cestaro v. Italy*,^{xxxvi} the Court not only condemned Italy for the violation of Art. 3 ECHR for the acts of torture committed by police forces during the 2001 G8 in Genova, but it also imposed the incorporation of the crime of torture in the domestic legislation. On that occasion, the Court clarified that this legislation would have to ensure an effective punishment of armed forces responsible for the acts of torture, emphasising that amnesty or immunity should not be granted in such cases of gross human rights violations. Moreover, if the ECtHR confirms that the *Legacy Act 2023* is in systemic violation of the Convention, this could lead to a preclusion of the use of amnesty and immunity in post-conflict contexts, at least in those cases where it would be a measure to ensure impunity rather than an effective reconciliation (Castellaneta 2024).

As a final remark, in 1998, the Good Friday Agreement highlighted that '[...] it is essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation' and that 'the achievement of a peaceful and just society would be the true memorial to the victims of violence' (Good Friday Agreement, p. 18, par. 11-12). The legal challenges analysed in this case note serve as a necessary reminder that post-conflict societies need to deal with their past to achieve a peaceful future. Hopefully, almost thirty years after the end of the Troubles, the United Kingdom will choose a path leading to truth and justice for the citizens of Northern Ireland.

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ⁱ European Court of Human Rights, no. 1859/24, *Ireland v. United Kingdom (III)*, 17 January 2024 (date lodged).

ⁱⁱ European Commission of Human Rights, no. 5310/71, *Ireland v. United Kingdom (I)*, 18 January 1978.

ⁱⁱⁱ High Court of Justice in Northern Ireland [2024] NIKB 11, *Dillon, McEvoy, McManus, Hughes, Jordan, Gilvary, and Fitzsimmons Application and In the matter of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 and the Secretary of State for Northern Ireland* (28 February 2024).

^{iv} Court of Appeal in Northern Ireland [2024] NICA 59, *In the Matter of an Application by Martina Dillon and others*



- NI Troubles (*Legacy and Reconciliation*) Act 2023 (29 September 2024).

^V Northern Ireland Office, *A Proposal for a Remedial Order to Amend the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023*, 4 December 2024, available at <https://www.gov.uk/government/publications/a-proposal-for-a-remedial-order-to-amend-the-northern-ireland-troubles-legacy-and-reconciliation-act-2023>.

^{VI} The Proposed Remedial Order was presented to Parliament on 4 December 2024 pursuant to paragraph 3(1) of Schedule 2 to the Human Rights Act 1998.

^{VII} After the Irish partition in 1921 and the Anglo-Irish Agreement in 1922, Northern Ireland has been dominated by two main communities, each seeking opposing political goals concerning the constitutional status of the Ulster counties. On the one hand, the ‘unionists’, of British origin and traditionally Protestants, were strong supporters of Northern Ireland as being a constitutive of the United Kingdom. On the other hand, the ‘nationalists’, of Irish origin and overwhelmingly Catholics, aimed at establishing a united island of Ireland. See also Lidia Bonifati, ‘La questione nordirlandese alla luce di Brexit: quale futuro per Belfast?’, *Costituzionalismo Britannico e Irlandese*, no. 1 (2024): 248–66.

^{VIII} On the process of transitional justice in Northern Ireland, see the articles of the Special Issue published in 2003 in the *Fordham International Law Journal* (vol. 26, no. 4), available at <https://ir.lawnet.fordham.edu/ilj/vol26/iss4/>.

^{IX} The Truth and Reconciliation Commission was a body of restorative justice established in 1996 to address the legacies of apartheid in South Africa often recalled as a best practice in post-conflict settlements (see Adrian Guelke, ‘Post-Conflict Management in Deeply Divided Societies. The Cases of South Africa and Northern Ireland,’ *Memoria e Ricerca, Rivista di storia contemporanea*, no. 3 (2023): 487-504; Mahmood Mamdani, ‘Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC),’ *diacritics* 32, no. 3 (2002): 33-59).

^X See Lord Saville, ‘The Report of the Bloody Sunday Inquiry’ (London: HMSO, 2010).

^{XI} See Northern Ireland Office, ‘The Stormont House Agreement. An Agreement on Key Issues that Opens the Way to a More Prosperous, Stable and Secure Future for Northern Ireland,’ *Policy Paper*, 23 December 2014, available at <https://www.gov.uk/government/publications/the-stormont-house-agreement>.

^{XII} A few months later having announced his intention to give implementation to the SHA, Boris Johnson unilaterally decided to abandon the agreement and focus on ‘the cycle of reinvestigations into the Troubles in Northern Ireland’ (see Secretary of State for Northern Ireland Brandon Lewis, ‘Addressing Northern Ireland Legacy Issues,’ Written Ministerial Statement, Statement UIN HCWS168, 18 March 2020).

^{XIII} Human Rights Committee, CCPR/C/GBR/CO/8, par. 11.

^{XIV} The European Commission of Human Rights (which at the time filtered the applications before the Court) established that the five techniques consisted of wall-standing; hooding; subjection to noise; deprivation of sleep; and deprivation of food and drink (see ECtHR, no. 5310/71, § 96).

^{XV} European Court of Human Rights, no. 5310/71, *Ireland v. United Kingdom*, 20 March 1978.

^{XVI} See European Court of Human Rights, no. 28957/95, *Christine Goodwin v. United Kingdom*, 11 July 2002, par. 90: ‘Nonetheless, the very essence of the Convention is respect for human dignity and human freedom.’

^{XVII} Cfr. European Court of Human Rights, no. 25781/94, *Cyprus v. Turkey*, 10 May 2001, par. 78.

^{XVIII} See European Convention on Human Rights Memorandum issued by the Northern Ireland Office, 16 May 2022, available at <https://bills.parliament.uk/bills/3160/publications>.

^{XIX} [2024] NIKB 11.

^{XX} Sections 7(3), 12, 19, 20, 21, 22, 39 and 42(1) of the Legacy Act.

^{XXI} Section 8 of the Legacy Act.

^{XXII} Section 43(1) of the Legacy Act.

^{XXIII} Sections 46(2), (3) and (4) and 47(1) and (4) of the Legacy Act.

^{XXIV} Sections 7(3), 12, 19, 20, 21, 22, 39, 41 and 42(1) (relating to immunity from prosecution); Section 41 (on the prohibition of criminal enforcement action for Troubles-related offences); Section 43(1) (barring Troubles-related civil actions between the first reading of the bill and its entry into force); and Section 8 (on the admissibility of material in civil proceedings).

^{XXV} [2024] NICA 59.

^{XXVI} Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

^{XXVII} House of Commons, Standing Orders 2002(2), 152B ‘Human Rights (Joint Committee)’.

^{XXVIII} See all the written evidence at the following link: <https://committees.parliament.uk/work/8754/northern-ireland-legacy-remedial-order/publications/written-evidence/>.



XXIX Joint Committee on Human Rights, '1st Report - Proposal for a Draft Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Remedial) Order 2024', 28 February 2025, available at <https://committees.parliament.uk/work/8754/northern-ireland-legacy-remedial-order/publications/reports-responses/>.

XXX European Court of Human Rights, no. 28883/95, *McKerr v. United Kingdom*, 4 August 2001.

XXXI See the Statement by the Secretary of State for Northern Ireland on 29 July 2024, available at <https://questions-statements.parliament.uk/written-statements/detail/2024-07-29/hcws30>.

XXXII Committee of Ministers, 'Execution of the judgments of the European Court of Human Rights - McKerr and four cases against the United Kingdom,' Interim Resolution CM/ResDH(2023)148, 7 June 2023.

XXXIII See also UN Office of the High Commissioner for Human Rights, 'Study on the Right to Truth: Report of the Office of the United Nations High Commissioner for Human Rights', Geneva, 8 February 2006, available at <https://digitallibrary.un.org/record/567521?v=pdf>.

XXXIV Inter-American Court of Human Rights, *Gomes Lund and Others v. Brazil*, Series C No. 219, 24 November 2010.

XXXV European Court of Human Rights, no. 25781/94, *Cyprus v. Turkey*, 10 May 2001.

XXXVI European Court of Human Rights, no. 6884/11, *Cestaro v. Italy*, 7 April 2015.

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