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Reflections from the Strasbourg Bench

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Thank you very much to BIICL for the invitation to speak to you today, to the Dorset Foundation for supporting and Debevoise & Plimpton for sponsoring this event and to Sam Rowe for moderating this evening. It is a great honour and a privilege to address such an eminent audience tonight.

When Kristin and I first discussed the possibility of me giving this year's Harry Weinrebe lecture and agreed the title "Reflections from the Strasbourg Bench" I dared hope – if only for a moment – that my reflections here tonight might focus on some of the highlights of the Strasbourg Court's engagement with general public international law during my nine years at the Court; cases which I always found most interesting and rewarding and of which I'm very proud. This might have included some of the older and perhaps lesser known examples such as:

- *Naït-Liman v Switzerland*, in which we engaged in great detail with the (then) state of the law, under Article 14 UNCAT and customary international law, in relation to the existence or not of a duty on Switzerland to entertain a civil action for damages in relation to torture allegedly committed in Tunisia;
- *Molla Sali v Greece*, in which we considered the relationship between the Convention and the 1913 Treaty of Athens, the 1920 Treaty of Sèvres concerning the protection of minorities and the 1923 Lausanne Treaty. In the just satisfaction judgment there was then also some discussion of the Monetary Gold principle in the context of providing just satisfaction for properties located outside the respondent State;
- The 2021 *Decision on the competence of the Court to give an advisory opinion under Article 29 of the Oviedo Convention,* in which the Court - for the very first time – had to consider whether to accept a request for an advisory opinion under another Treaty, here the Oviedo Convention.

The recent judgments in *Klimaseniorinnen* (climate change), *Semenya* (international sports arbitration) and the conflict related cases against Russia would, of course, also have featured. The latter cases, I will return to briefly at the end of my talk.

However, the more time passed and the more I reflected on what to talk to you about, the more it became clear that there were other, more pressing, issues concerning the Court which deserved being addressed head-on.

After all, the European Court of Human Rights, which it has been the honour of my life to serve on for the last nine years, is again the subject of widespread debate both here and abroad; a debate in much of which I hardly recognise the Court I so recently served on.

It saddens me, therefore, that the reflections I want to share with you – and the structure in which I present them - are, almost by necessity, defensive rather than – as I think they should be – celebratory.

This seemed to me even more poignant as we are – as many of you will appreciate - also approaching the 75th anniversary of the European Convention of Human Rights, signed in Rome on 4 November 1950, and have just passed – without much fanfare - the 25th anniversary of the entry into force of the Human Rights Act on 2 October 2000.[1]

Turning to the Court, and its work, I want to start by putting it into context. I apologise if some of this may seem basic and may be well known to some of you. However, in light of the fact that there appear to be significant misunderstandings which underlie or – and I hesitate to use this term – "inform" the current debate about the Convention and the Court, I hope it is nevertheless helpful if only by setting the record straight.

As you will know, the European Convention – and its Court – cover some 46 Member States across the whole of the European continent; from Armenia and Azerbaijan in the East to Portugal in the West, and from Iceland in the North to Cyprus in the South; covering some 700m people. The only exceptions, famously, are Belarus and Russia, as well as the Vatican.

This was not the situation when I arrived in Strasbourg. In September 2016, there were 47 States Parties to the Convention, including Russia. This, however, changed very rapidly when Russia was excluded from the Council of Europe, and consequently from the Convention, in response to its invasion of Ukraine in February 2022. However, as we will see, it is because of its prior membership and of the mechanisms governing the terms of Russia's exclusion from the Convention, that the Court continues – to this day - to have pending before it a significant number of applications against Russia.

By reason of its membership, the Court consists of 46 (formerly 47) judges, one in respect of each Contracting party; the judges are – and this bears emphasising – elected by MPs who are themselves largely elected and represent the national parliaments of all the Member States assembled in the Parliamentary Assembly of the Council of Europe. In their daily work, the judges are supported by approximately 600 staff lawyers, employed by the Court's registry; lawyers who are deeply familiar with the national legal systems and cultures of the different Member States.

In fact, these lawyers – who are some of the most talented lawyers I have ever worked with - are absolutely essential to enabling the Court, which works only in its two official languages, French and English, to deal – and to deal efficiently – with the enormous number of applications

[1] Para 2 of The Human Rights Act 1998 (Commencement No. 2) Order 2000

it receives; applications which are more often than not written in – and complain about administrative and judicial decisions made in - any of the other about 38 non-official languages of the member States.

The enormous caseload arises primarily from the fact that, unusually for an international court, Article 34 of the Convention provides for a compulsory jurisdiction in relation to individual applications to the Court. As a result, subject to certain admissibility requirements such as the need to have exhausted domestic remedies, every affected "person, non-governmental organisation or group of individuals [within the jurisdiction of a member state] claiming to be the victim of a violation … of the rights … in the Convention" has the right to apply to the Court and to have that application considered and decided. The Convention provides no filter and – importantly – no provision or procedure – as exists e.g. in the US Supreme Court – for *certiorari*, i.e. a procedure to enable the Court to – in any way – select the nature or subject matters and/or limit the number of the cases that come before it and which it is required to decide.[2] Like most national - certainly first instance – courts, the Court's output is, therefore, ultimately determined by the nature of the complaints and, dare I say it, by the – very variable - quality of the representation of and the submissions made by the parties.

In addition to individual applications, there is also provision – in Article 33 of the Convention – for inter-State applications by which one member state may refer to the Court any alleged breach of the Convention by another Member State.

This is, of course, the very mechanism by which Ireland - only last year - lodged proceedings against the UK to challenge the enactment and operation of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. As of today, this case[3] remains pending before the Court.

However, curiously, this pending case is rarely if ever referred to or even acknowledged by those calling into question the importance of membership of the Convention and/or access to the Strasbourg Court under the Belfast/Good Friday Agreement.

When I referred to "the enormous number of applications" let me give you some numbers. While there are only some 15 inter-State applications currently pending before the Court, they constitute a numerical – though not in importance or in terms of demand on judicial and other resources - negligible aspect of the overall 62,850 applications pending before the Court at the end of August this year.

This number of pending applications compares with the Court having disposed – through a judicial formation of either a single judge, a committee of three judges, a Chamber of seven judges or a Grand Chamber of seventeen judges - of some 36,819 applications last year alone.

Out of these 36+K applications, some 25,990 were declared inadmissible or struck out following friendly settlement or unilateral declaration.

[2] Art 32
[3] No. 1859/24

The remaining 10,829 applications were the subject of some 1,102 judgments of which the vast majority[4] was adopted by a Committee of three judges. Here it is important to note that committees (a) can only decide on matters already covered by the Court's well-established case-law,[5] and (b) their decisions or judgments, therefore, are not intended to create and are not (to be) treated as creating any new precedent.

It is noteworthy that, despite its enormous output, there are only ever one or two judgments a year (which ones of course may vary from country to country) which come to public attention and which generate political debate. More often than not, the Court's judgments are accepted without even a passing comment.

Just to put these numbers into a more personal context, my rough calculations suggest that, during my nine years at the Court, I was party to approximately 950 reported judgments, advisory opinions and decisions and declared more than 3200 applications inadmissible as a Single Judge. These applications covered a vast range of national legal systems as well as subject matters; from banking resolution, regulatory and tax law, VAT, bioethics and historic injustices - to the conduct of armed conflicts (Russia/Ukraine, Russia/Georgia and Armenia/Azerbaijan but also of German troops in Afghanistan); from immunities (parliamentary, diplomatic and international organisational) and the legality of covert interception/intelligence operations as well as bulk data interception, to the application of the ECHR to climate change and to international (sports) arbitration, criminal law and procedure, international child abduction, family law, mental health and modern slavery.

And, yes, they also did cover immigration and extradition matters but these were only a - in my case – relatively small part of the work and arose most frequently in the context of single judge decisions declaring complaints inadmissible.

The reason I spent some time looking at these figures in detail was also to contextualise the UK position before the Court and, therefore, the current debate about the Court and the Convention and its asserted impact on the UK.

After all, nearly 60% of the more than 62K applications currently pending before the Court relate to only three States, 34.7% (21,800 applications) against Turkey, 11.8% (7,450 applications) against Ukraine and 13.2% (8,300 applications) are legacy cases against Russia.

By contrast, at the end of 2024 the UK had 274 applications pending against it before the Court amounting to 0.07 applications per 10,000 inhabitants (just behind Ireland and Germany); the previous years it had always been at 0.04 and, therefore, the lowest per-head count of applications amongst all the Member States.

In fact, in 2024, the Court handed down only three judgments against the UK, of which one was a friendly settlement/strike out, one was a finding of no violation and only one contained

[4] 814 judgments in relation to 10,241 applications
[5] Art 28(1)(b)

at least one finding of a violation. The remaining applications will have been declared inadmissible or struck out by decision of a single judge or a committee.

In fact, the one judgment finding a violation concerned a breach of Article 10 – the right to freedom of speech – arising out of the success fee element of a cost award in defamation proceedings before the courts of England and Wales. The successful applicant in that case was, of course, Associated Newspapers Limited, the publishers of the Daily Mail, Mail online, the Mail on Sunday and other publications.

You will not be surprised to hear that this was not the only occasion when someone critical of the Court and the Convention, and possibly even advocating leaving the Convention system, sought the protection of the Court when they considered their "human rights" to have been violated and, by definition, therefore, not been adequately protected by domestic/the common law.[6]

In my experience, the primary reason why there are/have been so very few applications and even fewer successful applications against the United Kingdom lies in the fact that, under the Human Rights Act 1998, the UK courts and tribunals generally do such a good and thorough job at interpreting and applying the Convention that there is little the Court in Strasbourg can improve on.

While I want to return to the question of the Convention not providing or having provided protection beyond that which the domestic law or the common law was able or willing to provide in a minute, I need to say a little more on the ECHR impact in the specific context of migration. Here, I cannot do better than refer to the work done recently by Oxford University's Bonavera Institute. On 4 September, the Institute published a report – which has had surprisingly little coverage in the press - entitled "The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate".[7]

That report, rightly, highlighted 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

[6] See e.g. *Paterson v United Kingdom*, no. 23570/22, 3.9.2024, complaint under A8 that House of Commons disciplinary proceedings had been unfair and in breach of his right to respect for private and family life under A.8.

[7] Victoria Adelmant, Alice Donald, and Başak Çalı, The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate, Bonavero Report 3/2025, 4 September 2025 <https://www.law.ox.ac.uk/sites/default/files/2025-09/European%20Convention%20on%20Human%20Rights%20and%20Immigration%20Control%20in%20the%20UK_4%20Sept%202025.pdf>

residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country";[8] 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 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 unreasonable'".[9]

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 - domestic law provisions governing how immigration tribunals should assess Article 8, as introduced by the Immigration Act 2014,[10] 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".[11]

In fact, 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.

Let me be clear, I do not want to be understood as suggesting that the problem – whatever that is - lies with the domestic courts rather than the Strasbourg Court. Far from it! My experience at the Court and through my continuous engagement with the domestic judiciary has confirmed over and over again that the domestic judiciary – whether it be at tribunal level or above – in applying the Convention faithfully also gives fullest effect to the public interest in removal,

[8] *M.A. v Denmark* [GC], no 6697/18, 9.7.2021, §131
[9] *Ndidi v United Kingdom*, no 41215/14, 14.9.2017, § 76 and *Otite v United Kingdom*, no. 27.9.2022, § 42
[10] Which entered into force on 28 July 2014
[11] *Otite* § 33

deportation or extradition; an interest expressly protected by Article 8(2). This, again, is reflected in the extremely low number of admissible application and even lower number of findings of a violation against the UK.

In light of these facts, one cannot help but wonder whether the problem with the debate or even the underlying problem – in so far as it is one - might lie elsewhere. Here it may be worth noting that:

1. as the Bonavera Institute report notes, there is, in fact, no up-to-date published data on human-rights based appeals against deportation decisions generally and no data 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 very recent "Advice to the leader of the Conservative Party" 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.[12]

If the problem does lie elsewhere, one cannot help but wonder whether the current debate, seeking to lay the blame at the door of the Convention and the courts applying it, is not, in fact, an expression of a dislike for any enforceable (human) rights, especially where they come "armed" with judicial oversight. This, of course, goes to the very heart of our understanding of the separation of powers and the rule of law and, ultimately, the nature of our democracy.

Apart from what appears to be happening across the Atlantic at the moment in relation to forced removals and deportations, closer to home, the need for such judicial oversight was perhaps nowhere more evident than in the context of the so-called Rwanda scheme.

As you will recall, in the context of the operation of this scheme, the Strasbourg Court – unlike the High Court – at very short notice indicated to the UK Government, under Rule 39 of the Rules of Court, that the applicant, one N.S.K., should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the then ongoing judicial-review proceeding. I want to be clear, again, that the Court did not "stop the flight"; its indication was specifically directed to this one, and subsequently one other, applicant. However, once they had been removed from the plane, and following the grant of a number of further interim measures by the domestic courts, the plane ultimately never took off.

However, the primary reason why I mention this incident is to note that:

(a) Already at the High Court, the decision to remove NSK was quashed for failure by the decision maker to provide adequate reasons for the decision that his asylum claim was inadmissible. Perhaps even more noteworthy were the decisions – in the same judgment

[12] § 27.2

– in relation to some of the other applicants, such as AAA, where the decision was quashed because it had taken into account "the wrong facts", or AHA, where not only was the decision based on the wrong facts – in fact AAA's evidence had accidental been transposed into the decision made on his case – the decision-maker had also failed to consider his written representations. As far as I am aware none of these decisions on the substance of the individual cases were ever appealed; and

(b) In its ultimate decision on the Rwanda scheme, the UK Supreme Court quashed the scheme on the basis of the non-refoulement principle which, it made very clear, did not primarily find its origin in Article 3 of the ECHR but was, in fact, "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",[13] 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.

Without effective judicial oversight over the decisions made in the individual cases, it seems clear that there were substantial grounds for believing that individuals – including NSK, AAA and AHA – risked being deported to a real risk – as the Supreme Court established - of torture or inhuman or degrading treatment.

This leads, of course, to the fundamental question whether deliberately exposing individuals, no matter how otherwise objectionable they may seem be, to a real risk of torture, inhuman or degrading treatment, and to do so without a careful consideration of their case(s) or circumstances, would or should still be acceptable in 2025.

However, it is clear in any event that there just is no evidence that, even if it were acceptable in principle, the numerical challenge which, I understand, the Conservative Party has put at 150,000 per year and 750,000 over the term of a Parliament, could even remotely be met by removing this most fundamental protection; in fact the evidence I have seen so far clearly points the other way.

Let me just say a few more words about rule 39 indications because, as you will know, they have also been the subject of sustained criticism. Again, I do so from the point of view of someone who – over four years - was one of the duty judges responsible for deciding - and therefore on call every working day to decide - on rule 39 applications and who has, in that time, had to decide more than 800 such applications. I should add that under the Rules of Court I was not responsible for rule 39 indications against the United Kingdom.

The first thing to note is that the power to grant such interim indications is neither new nor novel.

In fact, this power, which is, in principle, only exercised in exceptional circumstances where there is an imminent risk of irreparable harm to a core Convention right, plays a vital role in avoiding irreversible situations that would prevent national courts and/or the Strasbourg Court from

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

properly examining Convention complaints. Such a power to "hold the ring", which exists in any developed judicial system, has been enshrined in the rules of procedure of the Convention institutions, originally the European Commission of Human Rights, at the very least since the Commission's 1975 Rules.

Furthermore, experience has shown that Governments have consistently accepted the exercise of this power by the Court and, in fact, the UK has consistently complied and has only once been held not to have taken all reasonable steps to comply with a rule 39 indication. During my time it was unfortunately also a not infrequent occurrence that Member States have, themselves, actively sought such rule 39 indications; in particular in the context of armed conflicts around Europe.

In fact, shortly after the rule 39 indication in relation to NSK, the Court also granted a rule 39 indications in relation to two British nationals, Shaun Pinner and Aiden Asli, who, having served in the Ukrainian armed forces, had surrendered to the Russian forces during hostilities and had been sentenced to death in the so-called "Donetsk People's Republic". The rule 39 indications were addressed to the Russian authorities and required them to ensure that the death penalty imposed on the applicants was not carried out, ensure appropriate conditions of their detention and provide them with any necessary medical assistance and medication. Their issue – in form of a binding injunction – were, in fact, positively welcomed by those otherwise critical of the Court and the Russian suggestion that they would not comply criticised.

This context takes me to another very important aspect of my work at the Court, namely the inter-State proceedings adjudicating on Russia's increasing military aggression against its neighbours and fellow Council of Europe Members. For the last 7 years of my term, I had the unusual privilege of having been intimately involved as part of the respective Grand Chamber compositions – as well as a duty judge - in all the resulting inter-State proceedings: first in *Georgia v Russia II*, and subsequently in *Ukraine v Russia (Crimea)*, concerning the invasion of Crimea in 2014 as well as in *Ukraine and Netherlands v Russia* concerning the fighting in Eastern Ukraine in 2014, the shooting down of MH17 that same year and the invasion of Ukraine in February 2022. The last of these judgments, which we handed down in July of this year, runs to some 501 pages and is supported by two annexes running to about 2000 pages summarising the evidence considered by the Court in reaching its comprehensive decision.

When one considers that, to date and for the foreseeable future, the Strasbourg Court has been and will be the only international court which has comprehensively engaged with the question of Russia's responsibility as a matter of international law for the human rights violations that occurred in those conflicts, it is very difficult to see how it can legitimately be said the Convention and the Court have outlived their usefulness or are no longer fit for purpose.

In fact, in this most recent case some 26 states intervened in support of the application made by the Ukraine asking it to – and I paraphrase – "hold Russian to account". In fact, some of them positively asserted 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".[14]

So the very concept of the "living instrument", so vehemently criticised in the context of the migration debate as "having extended the scope of the Convention too far as compared with the original intentions behind the Convention",[15] is here being invoked - by one of the signatories to the letters sent by the heads of Governments of nine Member States at the initiative of Italy and Denmark - in support of a positive submission that the Court should extend its jurisdiction.

It is perhaps not surprising if I confess to being puzzled as to what the Court is being criticised for. Either it can and should apply, in a careful, cautious and gradual manner, an evolutive interpretation – after all that is all that the "living instrument" doctrine is meant to be – in order to remain "capable of responding to the most significant" challenges of our time or it should hew closely to what is asserted – without clear evidence – to be "the" original intention behind its creation - but it seems to me it cannot do both.

Considering the – apparently so contested – concept of the "living instrument" it is perhaps also worth noting that, not only is it an expression of the international law concept of evolutive treaty interpretation but it is, like so many aspects of the Convention, deeply rooted in the English - common - law. After all, it was the Privy Council in its 1929 Opinion in *Edwards v Attorney General for Canada*[16] which confirmed that constitutional instruments are to be interpreted as "a living tree capable of growth and expansion within its natural limits" and not by "a narrow and technical construction". In that case, the Privy Council decided that the term "persons" for those eligible to sit in the senate and until then understood to only refer to men, could also include "women". It was Lord Bingham, in *Brown v Stott*,[17] who confirmed the identity in approach between these two concepts.

In fact, arguably, this is no more than a focused expression of the very nature of the common law. After all, as Lord Goff of Chieveley described it in 1998 in *Kleinwort Benson Ltd*:

> "… judicial development of the common law is inevitable. If it had never taken place, the common law would be the same now as it was in the reign of King Henry II; it is because of it that the common law is a living system of law, reacting to new events and new ideas, and so capable of providing the citizens of this country with a system of practical justice relevant to the times in which they live."[18]

There are, of course, those who say – perhaps as a result of this - its - very nature – that the Common Law would be able to – and would in fact – provide all the protection to ordinary citizens which the Convention – and the Strasbourg Court – currently provide.

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[14] § 261
[15] Letter of nine (Denmark, Italy, Austria, Belgium, Czech Republic, Estonia, Latvia, Lithuania and Poland) <https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf>
[16] [1930] AC 124 at 136
[17] [2003] 1 AC 681
[18] [1999] 2 AC 349 at 377, emphasis added

The "living" nature of the Common Law, of course, makes it rather difficult to deny that – perhaps today, having been infused with the experiences of adjudicating on human rights for now 25 years – it might do so.

What we can, however, be absolutely certain of is that, repeatedly over the last 70+ years, especially before the entry into force of the Human Rights Act, the Convention organs stepped in where the domestic courts, applying the common law, were unable to provide the protection which we now take for granted and even cherish. To take just a few examples:

- despite the fact that the use of torture had long been declared illegal in England and Wales, it was the Strasbourg Court in its 1978 *Tyrer* judgment which held that birching as a form of judicial punishment – in that case on the Isle of Man – was a form of degrading punishment contrary to Article 3; not a result which, I assume, many would question today.[19]
- It was also the Strasbourg Court's finding of a breach of Article 3 in its 1998 judgment in *A* in relation to acts by a step-father which the domestic courts, applying the common law, had accepted as "reasonable chastisement" which led to a change in the law protecting children from excessive punishment in the home;
- Again, it took a judgment of the Strasbourg Court, in its 1981 judgment in *Dudgeon* to ensure that homosexual conduct in private was finally decriminalised in Northern Ireland, something again neither Parliament nor the common law had been able to do;
- In a similar vein, it was the 1999 judgments in *Lustig-Prean and Beckett* and others, which finally led to the demise of the Ministry of Defence's absolute policy against homosexuals in the British armed forces. Today the armed forces rightly celebrate the fact that they are top rated as employers of LGBT staff and in 2023, the government apologised officially for the treatment of LGBT veterans, following the publication of the review by Lord Etherton;[20]
- It was the positive obligation to investigate established in the Court's case-law under Article 2 and 3 which ultimately led to the re-opening of the Hillsborough inquests and, most recently, to the Public Office (Accountability) Bill – referred to as the Hillsborough Law; and finally – and this list could go on and on
- It was the Court's finding, in its 1979 *Sunday Times No 1* judgment, that the injunction imposed by the domestic courts was in breach of Article 10 which facilitated the Sunday Times in exposing and reporting on the thalidomide scandal.

Let me close, however, with two quotations which in my view reflect very clearly what the founding fathers – because they were all men – really did have in mind when drafting the Convention 75 years ago.

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[19] See also the 1982 judgment in *Campbell and Cosans v the United Kingdom*, nos. 7511/76 and 7743/76, 25.02.1982, Series A48, which held that the existence of corporal punishment as a disciplinary measure in schools was in breach of the Convention (Article 2 of Protocol No 1) and led directly to the abolition of corporal punishment in state schools by means of sections 47 and 48 of the Education (No. 2) Act 1986 - Resolution DH (87) 9 at https://hudoc.echr.coe.int/eng?i=001-55442

[20] https://www.gov.uk/government/publications/lgbt-veterans-independent-review

The first comes from *Pierre-Henri Teitgen*, seen as one of the true driving forces behind the Convention. He said during a Session of the Consultative – now Parliamentary - Assembly of the Council of Europe, on 07.09.1949:
"Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were, to remove the levers of control. One by one, freedoms are suppressed, in one sphere after another. Public opinion and the entire national conscience are asphyxiated. […] It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm to the minds of a nation menaced by this progressive corruption, to warn them of the peril and to show them that they are progressing down along a road which leads far […]."

To show that this was not only a sentiment pursued by continental European negotiators, the second quote comes from Sir David Maxwell Fyfe KC, who later became Home Secretary and, as Earl Kilmuir, Lord Chancellor and who was one of the driving UK forces behind the drafting of the Convention. At his speech at the 1950 Annual Dinner of the Grotius Society, he reflected upon the benefits of the Convention just adopted and stated that:
"Anyone who has had to study the onset of totalitarianism would agree that there is a tide in the affairs of States which taken at the flood sweeps on its people and leaves them high and dry on the rocks of tyranny. Nevertheless, there is always a moment when the guiding lights of democracy and reason, though burning low, are not extinguished. The problem is how these lights can be tended in time. We believe that an impartial and objective examination by an international body of the alleged infringements of a generally accepted code of individual freedom would illuminate the dangers for all good democrats to see. We believe, further, that when the true implications of the situation are seen, a stand against the encroachments of tyranny would be made."[21]

This is exactly the role the Court did play during my time at the Court in relation to Russian aggression in Europe and in relation to many other modern challenges and will continue to play and, if one observes the political developments in Europe and elsewhere, one might be forgiven for thinking that, in fact, the Convention and the Court, as the early warning system intended by the founding fathers, is more important and more necessary today than they have been for quite some time.

Thank you.

[21] Grotius Dinner, in 36 TRANSACTIONS OF THE GROTIUS SOCIETY 56 (1950)