# REFORM TO CONSERVE:
## A NOVEL APPROACH TO THE UK AND THE ECtHR VIA THE COUNCIL OF EUROPE

By Dr IOANNES DE FABBRI-CHOUNTIS, PhD


HJS
Henry
Jackson
Society

CENTRE FOR RESILIENT SOCIETY

DEMOCRACY | FREEDOM | HUMAN RIGHTS

April 2025

Published in 2025 by The Henry Jackson Society

The Henry Jackson Society
Millbank Tower
21-24 Millbank
London SW1P 4QP

Registered charity no. 1140489
Tel: +44 (0)20 7340 4520

**www.henryjacksonsociety.org**



Title: "REFORM TO CONSERVE: A NOVEL APPROACH TO
THE UK AND THE ECtHR VIA THE COUNCIL OF EUROPE"
By Dr Ioannes de Fabbri-Chountis, PhD

£9.95 where sold



Cover image: 3D illustration of the ECHR (European Court of Human Rights) logo on facade of glass building by Skorzewiak at Shutterstock (https://www.shutterstock.com/image-illustration/strasbourg-france-february-20-2024-echr-2428169901).

# REFORM TO CONSERVE: A NOVEL APPROACH TO THE UK AND THE ECtHR VIA THE COUNCIL OF EUROPE

By Dr IOANNES DE FABBRI-CHOUNTIS, PhD

HJS Henry Jackson Society

DEMOCRACY | FREEDOM | HUMAN RIGHTS

CENTRE FOR RESILIENT SOCIETY

April 2025

## About the Author

**Dr Ioannes de Fabbri-Chountis, PhD** is a historian of ideas and adviser with extensive and diverse experience across sectors, in politics, heritage and the charity sector across the UK, France and Greece. He has worked in the House of Lords and served as a political adviser in the Hellenic Parliament and the Parliamentary Assembly of the Council of Europe, focusing on immigration policy.

Ioannes is an Associate Fellow of the Royal Historical Society, and he holds a PhD from the University of Aberdeen, where his research examined classical and Ciceronian influences on Edmund Burke's thought. His work has been published *inter alia* in *Engelsberg Ideas*, *The London Magazine*, and the international edition of *The New York Times*. His first book, focusing on Lord Byron's political ideas, was published in 2022.

## Acknowledgements

I am grateful to all those whose insights and guidance have informed the preparation of this report. In particular, I wish to thank Dr Theodoros Roussopoulos MP, President of the Parliamentary Assembly of the Council of Europe, as well as British lawmakers such as The Lord Griffiths of Burry Port and The Lord Russell of Liverpool. Their reflections and advice proved invaluable in shaping the analysis presented here.

I am also indebted to Dr Alan Mendoza and Professor Matt Qvortrup for their thoughtful suggestions during the review process. Finally, I would like to thank Dr Christina Fasone (LUISS) and Mykola Kuzmin for their valuable assistance in the research and production of this paper.

## About Us

DEMOCRACY | FREEDOM | HUMAN RIGHTS

## About The Henry Jackson Society

**The Henry Jackson Society** is a think-tank and policy-shaping force that fights for the principles and alliances that keep societies free, working across borders and party lines to combat extremism, advance democracy and real human rights, and make a stand in an increasingly uncertain world. The Henry Jackson Society is a company limited by guarantee registered in England and Wales under company number 07465741 and a charity registered in England and Wales under registered charity number 1140489.

For more information, please see **www.henryjacksonsociety.org**.

## About the Centre for Resilient Society

The **Centre for Resilient Society (CRS)** is a citizen-focused, international research centre within the Henry Jackson Society, which seeks to identify, diagnose and propose solutions to threats to the social resilience of liberal Western democracies.

The centre's work includes addressing the twin challenges posed by radicalisation and terrorism. The centre is unique in addressing violent and non-violent extremism. By coupling high-quality, in-depth research with targeted and impactful policy recommendations, it aims to combat the threat of radicalisation and terrorism in our society.

The centre's work also includes broader challenges of democratic resilience – including threats from both foreign interference and domestic issues. This includes the potential harm that various forms of social, cultural and political insecurity, conflict and disengagement can pose to the long-term sustainability of democracies, including the resilience of their institutions, public policy outcomes, citizens' health and wellbeing, and economic growth and prosperity. It also explores the balance between free speech and hate speech, and encourages respectful debate between those of different views, rather than cancellation. Moreover, it underscores how social and political instability can make nations vulnerable to internal and external actors seeking to deepen cleavages, undermine consensus and, ultimately, to weaken democratic functioning.

## Contents

## Executive Summary

This policy paper presents a compelling case for reforming the European Court of Human Rights (ECtHR) to address growing concerns over its perceived constraints on UK sovereignty, particularly in the realm of immigration policy. It argues that withdrawing from the ECHR, while superficially appealing to some, would exact significant diplomatic, legal and moral costs, undermining the UK's global leadership and breaching key agreements such as the Belfast/ Good Friday Agreement. Instead, the paper outlines a proactive reform agenda, leveraging the UK's influence within the Council of Europe (CoE) to strengthen the ECtHR's transparency, impartiality and efficiency.

The proposal, titled 'Reform to Conserve', underscores the importance of addressing the Court's structural flaws – particularly the expanding interpretation of rights and the lack of rigorous judicial selection processes. It calls for practical measures, including stricter appointment criteria for judges, mandatory declarations of interest and a robust recusal framework to ensure impartiality and mitigate conflicts of interest. These reforms are essential to restoring public confidence and ensuring that the ECtHR remains a credible guardian of human rights, rather than a source of judicial overreach.

The paper highlights the UK's unique opportunity to lead a coalition of reform-minded states at a critical juncture in European politics. Rising discontent with judicial activism and immigration challenges across the continent has created fertile ground for change. By spearheading reforms grounded in subsidiarity and judicial accountability, the UK can simultaneously address domestic sovereignty concerns and reinforce its standing as a global advocate for human rights and the rule of law.

The analysis concludes that reform is not only feasible but imperative. With principled leadership and targeted action within the CoE's Parliamentary Assembly and Committee of Ministers, the UK can preserve its influence, safeguard its domestic interests and reinforce the ECtHR's foundational balance between individual rights and state sovereignty. By choosing reform over retreat, the UK can uphold its legacy as a leader in European human rights while ensuring the ECHR evolves to meet the challenges of the 21st century.

This policy paper proposes five recommendations for reforming the ECHR, reflecting a Burkean approach, advocating for careful and considered reform based on prudence, instead of radical measures, to institutional balance and judicial integrity:

1. Judges should be required to publish declarations of interest, including any connections to non-governmental organisations (NGOs).
2. The ECtHR should ensure transparency in its registry and member impartiality by publishing a comprehensive list of its members, following international judicial best practices.
3. Nomination criteria should prioritise substantial judicial experience while requiring full transparency regarding candidates' affiliations, including past NGO involvement, to uphold judicial balance and credibility.
4. The Parliamentary Assembly of the Council of Europe's Judges Selection Committee, alongside the Expert Advisory Panel for judge appointments, should receive sufficient resources and time to conduct thorough assessments of candidates.
5. Broadcasting interviews conducted by the Judges Committee would enhance transparency and public scrutiny, discouraging unqualified candidates from applying.

6. It is proposed only as an *ultimum refugium*, and only if all other reform efforts have been tried and resisted, that a collective exit by the UK, France, Germany, and Italy be undertaken – at least temporarily – pending accession under a reformed court.

It is the author's hope and intent that all major UK political parties, whether in government or opposition, will be able to adopt these measured, middle-ground reforms – either in full or in part – to advance meaningful ECtHR reform. This process should be pursued through diplomatic and legislative engagement in Strasbourg, particularly within the CoE's Committee of Ministers, the Parliamentary Assembly and the European political groups in the Alsatian capital to which UK parties belong. This paper outlines the mechanisms for achieving these reforms, providing a structured approach to strengthening judicial integrity and transparency within the European Convention of Human Rights (hereinafter, ECHR) framework.

## Methodology – Summary

This policy paper adopts a multi-faceted approach to analysing the European Court of Human Rights (ECtHR) and identifying reforms. The methodology consists of three primary components.

The first step in this analysis was an extensive review of scholarly literature and policy papers related to the ECtHR. This provided a comprehensive understanding of the Court's legal framework, its role within the Council of Europe (CoE) and its evolving function in human rights protection. Sources such as Helen Keller's critiques of the selection process and Sir Noel Malcolm's observations on the expansive interpretation of rights are central to the foundation of this paper. This review highlighted key concerns regarding the Court's judicial impartiality and the perception of judicial overreach, particularly regarding immigration cases, which form a core focus of the paper.

Additionally, this paper draws on specific case studies that illustrate the issues identified. For example, the cases of a "paedophile avoiding deportation" and "Albanian burglars winning the right to stay in the UK" demonstrate the tension between ECtHR rulings and national sovereignty, a key issue in the paper. These examples provide concrete evidence of the expanding scope of rights under the ECtHR and the perceived judicial overreach.

Finally, the analysis also draws from the perspectives of legal experts, judges and policymakers who have voiced concerns regarding the functioning of the ECtHR as well as those who might have a different view; the author has conducted a series of interviews with experts from both sides of the argument. This expert commentary is used to highlight the gaps in the ECtHR's functioning, particularly around transparency and judicial accountability, which the paper aims to address through reform proposals.

This paper integrates both qualitative and quantitative methods to ensure a comprehensive understanding of the issues at hand. Qualitative insights were gathered through expert interviews, which provided in-depth perspectives on the functioning of the ECtHR and its judicial processes. On the quantitative side, this paper draws on statistical data, such as the number of cases in which the UK has been involved in ECtHR rulings, and the frequency of rulings affecting immigration policy, to demonstrate the growing tension between the Court's decisions and national sovereignty.

The approach taken in this policy paper was selected for a series of reasons. First, the ever-expanding scope of rights under the Convention, particularly in cases involving immigration, has sparked significant public and political debate in the UK. These issues are crucial to understanding the public discontent with the ECtHR and the need for reform. The political climate, especially concerning the UK's sovereignty post-Brexit and the increasing concern over judicial activism, makes these issues particularly timely.

Furthermore, the paper's focus on judicial appointments and the expansion of rights is directly linked to UK sovereignty and its legal traditions. Reforming the judicial appointment process will ensure that judges selected for the ECtHR have the requisite expertise, experience and impartiality to ensure decisions reflect both the Convention's intentions and member-state sovereignty. The expansion of rights challenges the principle of subsidiarity, whereby national authorities should have the primary responsibility for interpreting and applying human rights law. Addressing this imbalance ensures the Court remains a balanced guardian of rights without undermining national sovereignty.

The recommendations presented, such as stricter judicial nomination criteria and transparency in the selection process, are grounded in both the problems identified and best practices

from other international judicial bodies. For instance, requiring declarations of interest and enhancing the transparency of the Court's registry mirrors successful reforms in other courts, such as the European Court of Justice. These reforms are not theoretical but drawn from comparative analysis.

All in all, the proposed reforms are not only grounded in the realities of the ECtHR's current challenges but are also based on a rigorous analysis of comparative judicial practices. These reforms – ranging from stricter judicial nominations to enhanced transparency – aim to restore balance between individual rights and state sovereignty, ensuring that the ECtHR continues to serve as an impartial and credible institution in Europe.

# 1. Introduction

*What are the Council of Europe and the European Court of Human Rights?*

## 1.1. History

The Council of Europe (hereinafter, CoE) is an international organisation primarily dedicated to upholding human rights, the rule of law and soft security. [1] Established in 1949, the CoE emerged in a Europe devastated by the Second World War (1939–1945), driven by a collective desire to prevent future conflicts – particularly amid the looming Cold War and nuclear threat – and to rebuild the continent on the foundations of shared democratic values and humanitarian principles. The founding signatories of the Treaty of London, establishing the CoE, signed on 5 May 1949 at St James's Palace in London, were Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. [2] Sir Winston Churchill, often regarded as one of the CoE's founding fathers, observed during his address to its inaugural session: "A European Assembly forbidden to discuss human rights would indeed have been a ludicrous proposition to put to the world." Churchill envisioned the CoE as a forum for collaboration that complemented the sovereignty of its member-states, proclaiming at the European rally in Amsterdam on 9 May 1948: "We hope to see a Europe where men of every country will think as much of being a European as belonging to their native land, and what without losing and of their love and loyalty of their birthplace." [3] Thus began the UK's enduring and pivotal relationship with the CoE.

## 1.2. Membership

Historically, until the fall of the Berlin Wall in 1989, membership of the CoE was *de facto* restricted to Western European states. Since then, its geographical scope has expanded to include 46 member-states spanning the entire European continent (excluding Belarus, Kosovo and, following its expulsion in 2022, the Russian Federation) and beyond; Armenia, Georgia, Azerbaijan and Türkiye are full members, while the United States, Canada and Japan hold observer status; Jordan, Kyrgyzstan, Morocco and the Palestinian Legislative Council *[sic]* are "partners for democracy", a special status promoting democratic dialogue.

## 1.3. The Council of Europe, the European Union and the European Council

In the press and public discourse, the CoE is often conflated with or mistaken for the European Union (hereinafter, EU) and/or the European Council (hereinafter, EC). Indeed, it is not uncommon to hear segments of the British public assuming, after the country's departure from the EU, that it has also left the CoE. For the purposes of this paper, it is crucial to briefly outline the key differences between these international organisations.

The EU, which currently comprises 27 member-states, focuses on economic and monetary integration (notably through the Eurozone) with a long-term aim of political integration. In recent years, the EU has also increasingly addressed security, defence and interior affairs, including immigration. EU member-states now constitute a majority within the CoE, accounting for 27 out of 46 members. Notably, the EU is still negotiating its accession to the

[1] Martyn Bond, *The Council of Europe: Structure, History and Issues in European Politics* (Abingdon: Routledge, 2011), p.32.

[2] The official treaty document can be accessed here: https://rm.coe.int/1680306052.

[3] Sir Winston Churchill's speech to the Council's Consultative Assembly (17 August 1949) can be found here: https://winstonchurchill.org/resources/speeches/1946-1963-elder-statesman/the-council-of-europe/?utm_source=chatgpt.com. His speech in Amsterdam can be found here: https://www.cvce.eu/content/publication/2008/4/21/19c46889-2c6d-4dba-9371-dc965cd79a6a/publishable_en.pdf .

European Convention on Human Rights (hereinafter, ECHR). More specifically, following the Lisbon Treaty, which came into force on 1 December 2009, the EU was mandated to accede to the ECHR. However, as of January 2025, the EU has not yet completed this accession. Negotiations between the EU and the Council of Europe commenced in 2010, leading to a draft accession agreement in 2013. In December 2014, the Court of Justice of the European Union (CJEU) issued Opinion 2/13, declaring the draft agreement incompatible with EU law, citing concerns over the autonomy of the EU legal order. Negotiations resumed in 2020, with significant progress reported. By March 2023, a technical agreement was reached, addressing many of the CJEU's concerns. Despite this progress, several steps remain before accession can be finalised, including obtaining a positive opinion from the CJEU on the revised agreement, securing approval from the European Parliament and ratification by all EU member-states.

Another common misconception involves the distinction between the CoE and the EC. The EC is an EU institution comprising the heads of state or government of EU member-states and is responsible for setting the EU's political priorities and overall direction. In contrast, the CoE is entirely independent of the EU, and the EC plays an integral role solely within the EU's governance structure. Furthermore, the European Commission and the European Parliament serve as the EU's executive and legislative branches, respectively.

According to Simon Russell, 3rd Baron Russell of Liverpool, a former member of the UK delegation to the Council of Europe, this public confusion stems from the fact that both the CoE and the ECtHR are ineffective at communicating simply and clearly what they exist to do and what they achieve. This results in a twofold problem: first, at the institutional level, a lack of clarity in their branding and identity; and second, at the national level, the absence of a well-articulated explanation of the CoE's purpose and role. [4]

## 1.4. The CoE's function and responsibilities

Unlike the organisations described above, the CoE does not pursue an economic agenda for integration, nor does it address hard security issues, although in recent years it has expanded its efforts on improving soft security. [5] Instead, its core activities are defined as promoting and protecting democracy, human rights and the rule of law. [6] The CoE has focused its efforts on monitoring concerns that underpin the values of Western society by negotiating conventions that establish shared laws and practices among its member-states. Some of these conventions address core issues such as the prohibition of torture, the abolition of the death penalty, the protection of the rule of law and the fight against corruption.

### *1.4.1. The ECHR*

The European Convention on Human Rights was the first and most fundamental convention signed by all members of the CoE. The European Court of Human Rights ensures compliance with the Convention and grants citizens the right to directly appeal against their national authorities in cases where their human rights, as defined by the Convention, have been violated. Additionally, the ECtHR serves as a forum for bringing cases against member-states that fail to fulfil their human rights obligations. [7]

In the UK, as in other European countries, there is often further confusion between the roles of the ECtHR and the European Court of Justice (hereinafter, ECJ). The ECJ, as the judicial authority of the EU, is responsible for interpreting and enforcing EU law among its member-

[4] Private interview with the author, House of Lords, 5 December 2024.

[5] See Bond, *The Council of Europe*.

[6] According to the Council of Europe's official website: https://www.coe.int/en/web/portal/the-council-of-europe-key-facts.

[7] Bond, *The Council of Europe*, p.36.

states and institutions, primarily dealing with matters such as trade, competition and EU treaties. By contrast, the ECtHR focuses exclusively on human rights issues, such as freedom of expression and protection against torture. While ECJ rulings are binding within the EU legal framework, ECtHR judgments require states to amend laws or practices to align with human rights standards. In essence, the ECJ serves the legal order of the EU, whereas the ECtHR safeguards individual human rights across a wider Europe.

As a result, following the UK's departure from the EU, the country remains bound by the provisions of the ECtHR through its membership of the CoE, but is no longer subject to the ECJ. It is important to emphasise that a country cannot withdraw from the ECHR while retaining membership of the CoE. Adherence to the ECHR is a fundamental obligation and condition of CoE membership. Having said that, it is, of course, legally possible for a country to denounce the ECHR (a formal process provided under Article 58 of the Convention), but this would automatically violate its obligations as a member of the CoE. This was demonstrated with Russia's expulsion in 2022, which followed violations of CoE principles, including breaches of the ECHR. The UK was one of the leading proponents of Russia's expulsion then.

### *1.4.2. The CoE's four pillars*

#### 1.4.2.1. The Committee of Ministers

According to its statute, the CoE is an intergovernmental organisation, based on four main structural pillars. The first of these is the Committee of Ministers (hereinafter, CM), which comprises ambassadors from the member-states. The CM meets weekly in Strasbourg to oversee the activities of the CoE, with decision-making authority resting with the member-states and, therefore, the CM.[8] Additionally, the CM functions as both the legislative and budgetary authority of the CoE. The chairmanship of the committee rotates among member-states every six months, in alphabetical order, changing in May and November. While all states have equal voting rights, larger states such as the UK, France and Germany informally exert greater influence within the organisation, owing to their status as major budget contributors. The CM is also responsible for adopting agreements and conventions, which are subsequently opened to member-states for signature and ratification.

One of the CM's key responsibilities is supervising the execution of ECtHR judgments and closing cases once member-states have fulfilled the required rulings.[9] The CM employs various approaches to address states that fail to comply with ECtHR judgments. For instance, states may be encouraged to honour their commitments through programmes designed to strengthen their administrative and judicial capacity. Alternatively, they may be granted additional time to improve compliance. In cases of persistent negligence, the CM can publicly 'name and shame' the non-compliant state. Should a member-state continue to obstruct or neglect the execution of a judgment, the CM has the authority, as a measure of *ultimum refugium*, to revert to the ECtHR and initiate proceedings for non-compliance.

While some argue that such sanctions amount to little more than moral and political pressure – a form of political translation of the moral authority of human rights – it is important to note that a mechanism introduced under Protocol No. 14 in 2010 allows the CM to impose financial penalties on countries failing to comply with ECtHR rulings, including financial compensation for litigants.[10] Ultimately, the CM prioritises dialogue, political engagement and peer pressure to secure compliance, reflecting the CoE's cooperative ethos. Financial penalties are seen as a

8 For more information on the CM, see https://www.coe.int/en/web/cm/about-cm.

9 Bond, *The Council of Europe*, p.43.

10 Sir Noel Malcolm, *Human Rights and Political Wrongs: A new approach to Human Rights law* (London: Policy Exchange, 2017), p.11; See for example, *Ilgar Mammadov v. Azerbaijan* (2017) and *Catan and Others v. Moldova and Russia* (2021).

move of last resort and have yet to be formally imposed, partly because states often comply when faced with mounting diplomatic pressure and reputational damage; in other words, as Russia's 2022 expulsion exemplified, membership to the CoE signifies membership to the club of respecting the rule of law.

Two additional pillars of the CoE, with narrower remits, are the Congress of Local and Regional Authorities in Europe (CLRAE) and the Conference of International Non-Governmental Organisations. [11]

#### 1.4.2.2. The Parliamentary Assembly

The Parliamentary Assembly of the Council of Europe (hereinafter, PACE) is explicitly referenced in the founding statute of the CoE. [12] PACE brings together politicians elected to the national parliaments of member-states (or, in the case of the UK, appointed to the House of Lords) who are delegated to the CoE to perform an essentially consultative role for the Committee of Ministers (CM). [13] As in any national parliament, PACE includes political groups spanning the ideological spectrum. Currently, there are six political groupings:

- the Socialists, Democrats and Greens Group (SOC, 157 members)
- the European People's Party (EPP/CD, 133 members)
- the European Conservatives Group and Democratic Alliance (EC/DA, 76 members)
- the Alliance of Liberals and Democrats of Europe (ALDE, 88 members)
- the Group of the Unified European Left (UEL, 34 members)
- plus 49 non-registered members.

The UK delegation, alongside those of France, Germany and Italy, is the largest, comprising 18 full members and 18 substitutes. Its current chairman is the Rt Hon. Lord Touhig. Reflecting the political composition of its national parliament, the UK delegation underwent significant changes following the 4 July 2024 General Election, which resulted in a strong Labour presence. [14]

PACE has its own formal internal structure, comprising, *inter alia*, 13 committees, [15] as well as numerous sub-committees and secretariats. Permanent civil servants of the CoE support the parliamentarians in their work. The plenary assembly meets in Strasbourg four times a year (during part-sessions), with each meeting lasting one week, to debate and vote on issues of significance. PACE determines its own agenda, and its debates cover a wide range of topics. While PACE is primarily a political body composed of representatives elected to national parliaments, in principle, each national delegation also represents the broader interests of its respective country.

#### 1.4.2.3. The Judges Committee

For the purposes of this policy paper, the Committee on the Election of Judges to the ECtHR (hereinafter, Judges Committee) is of particular importance, warranting further elaboration. [16]

---

[11] For more on these two bodies, see Bond, *The Council of Europe*, pp.47-52.

[12] For more information on PACE, see https://pace.coe.int/en/.

[13] Bond, *The Council of Europe*, p.44.

[14] The full composition of the UK delegation can be found here: https://www.parliament.uk/mps-lords-and-offices/offices/uk-parliamentary-assemblies/pace-uk/uk-delegation-pace/.

[15] These are the Presidential Committee, the Bureau, the Joint Committee and the Standing Committee, as well as the Committee on Political Affairs and Democracy; the Committee on Legal Affairs and Human Rights; the Committee on Social Affairs, Health and Sustainable Development; the Committee on Migration, Refugees and Displaced Persons; the Committee on Culture, Science, Education and Media; the Committee on Equality and Non-Discrimination; the Monitoring Committee; the Committee on Rules of Procedure, Immunities and Institutional Affairs; and the Committee on the Election of Judges to the European Court of Human Rights.

[16] Information on the CoE's official website, https://pace.coe.int/en/aplist/committees/30/committee-on-the-election-of-judges-to-the-european-court-of-human-rights. and https://pace.coe.int/en/pages/committee-30/AS-CDH.

The Judges Committee comprises 22 seats. According to statute and procedure, its ordinary members and their substitutes are nominated by political groups in proportion to their strength in the Assembly and must possess sufficient legal expertise and experience. [17] Currently, there are three UK members on the Judges Committee, all from the EC/DA group: Sir Christopher Chope MP, Lord David Blencanthra and the Rt Hon. Lord Richard Keen, who presides over the Legal Affairs Committee *ex officio*. [Note: this will be updated during the January 2025 part-session.]

The ECtHR itself consists of 46 judges, one from each contracting party to the Convention or PACE member-state. Elections occur whenever a judge's mandate elapses, typically after nine years of continuous service, at which point the judge retires from the ECtHR. The process for electing new judges to the ECtHR unfolds as follows: First, the member-state of the retiring judge proposes a list of three candidates. The Judges Committee then deliberates *in camera* (an issue to which we shall revert below). This deliberation involves three key steps: a briefing session, candidate interviews and subsequent discussion among committee members, culminating in a formal vote. Each candidate, interviewed in alphabetical order, is allocated 30 minutes, including a five-minute self-presentation. Committee members, posing questions in either official language with simultaneous interpretation, may scrutinise any aspect of the candidates' qualifications or experience.

Following the interviews, the committee determines whether all candidates meet the necessary criteria. If not, it may recommend rejecting the list, as happened recently in the case of Poland. [18] If a list is not rejected, the committee votes by secret ballot to indicate its preferred candidate. Voting is restricted to members who attended all interviews which, based on recent minutes, usually constitutes around half of the committee's total composition – approximately 10 MPs. The recommendations of the Judges Committee are then passed on to PACE, typically expressed in terms of consensus or majority, without detailed reasoning. If the Assembly ratifies a rejection, the list is definitively discarded; otherwise, it is referred to the Committee. Elections occur during the Assembly's part-sessions, held every three months, with members voting by secret ballot. To be elected, a candidate must secure an absolute majority in the first round or a relative majority in the second round. The term begins upon assuming duties or no later than three months after the election.

Many of the shortcomings and structural flaws associated with the ECtHR judge selection process originate at the committee stage. Consequently, this paper places additional focus and scrutiny on its functions and potential reforms. Commenting on this procedure, Helen Keller has observed that "virtually no information about the internal mechanics of the election process within the Parliamentary Assembly of the Council of Europe (PACE) has been made public. In this regard, while it is impossible to completely eliminate lobbying and political deals from influencing the process, there should be rules on lobbying in the PACE." [19] Retired ECtHR judge Loukis Loucaides concurs, describing the process of selecting and appointing judges as quite defective. [20]

Overall, judges of the Strasbourg Court bring diverse political views, educational and personal backgrounds and life experiences. Some specialise in specific areas of human rights law, while

[17] Despina Chatzivassiliou, *Procedure for the election of judges to the ECHR: Memorandum prepared by the Secretary General of the Assembly* (Strasbourg, CoE, 2024), p.3.

[18] The lists of candidates submitted by Poland for the position of judge at the ECtHR were rejected in April 2021 and then again in January 2022. However, in July 2024, under a new liberal government led by Donald Tusk, Poland submitted a revised list of candidates. This list was accepted and on 1 October 2024, Anna Adamska-Gallant was elected as the new Polish judge to the ECHR, succeeding Krzysztof Wojtyczek, whose term had expired on 31 October 2022.

[19] Helen Keller, "How to Improve Independence and Impartiality of Judges of the European Court of Human Rights", *European Convention of Human Rights Law Review* 4 (3) (2023): p.260.

[20] Loukis Loucaides, *The European Convention of Human Rights* (London: Brill, 2007), *passim*.

others are more rooted in particular legal traditions or political ideologies. Since not all judges are career jurists, judgments of the Court are often drafted by Registry lawyers. Nevertheless, the independence, efficiency and credibility of ECtHR judges remain of paramount importance, as they are widely regarded as the public face of the Court. [21] Alex Schwarz and Kanstantsin Dzehtsiarou propose an insightful tripartite typology of ECtHR judges: the "technician", the "philosopher" and the "diplomat". The first type focuses almost exclusively on the adjudicatory function of the Court. The second emphasises the strategic development of case law. The third prioritises the executability of judgments and the overall effectiveness of the system. [22]

[21] For more on how judicial independence is empirically measured, see John Ferejohn, Frances Rosenbluth and Charles Shipan, "Comparative Judicial Politics", MacMillan Center for International and Area Studies at Yale, October 2004, https://leitner.yale.edu/sites/default/files/files/resources/docs/comparativejudicialpolitics.pdf. Cf. "This is not to say that the spatial model developed by Ferejohn, Rosenbluth and Shipan is without merit in all circumstances. What this analysis shows is merely that the spatial model does not explain the British courts' activism." (Matt Qvortrup (ed.), *The British Constitution: Continuity and Change* (London, Bloomsbury Publishing, 2013) p.63.) Interestingly, Qvortrup also notes how "Indeed, in the areas in which the courts intervened, namely, criminal justice and anti-terrorism legislation, there was practically unanimity between the Government and the Opposition. The courts' action seemingly flies in the face of the established theory." (Ibid., p.66.)

[22] Kanstantsin Dzehtsiarou and Alex Schwartz, "Electing Team Strasbourg: Professional Diversity on the European Court of Human Rights and Why It Matters", *German Law Journal* 21 (2020): p.621.

## 2. The ECHR and the UK

### *A Short History*

It was mentioned in the introduction that the UK was one of the founding signatories of the CoE and the ECHR. Sir Winston Churchill is credited in Strasbourg as one of the founding fathers of the Council, alongside Konrad Adenauer, Robert Schuman and Alcide De Gasperi. As of 2025, ECtHR judgments have driven significant legal changes and left a positive imprint on policy in the UK. Examples include, *inter alia*, the abolition of corporal punishment in state schools, the exemption of victims of severe domestic violence from cuts to housing benefits, enhanced protection for religious freedom in the workplace and the decriminalisation of homosexuality in Northern Ireland. However, this does not imply that bilateral exchanges between the Council (and the Strasbourg Court) and the UK have always been smooth. [23]

Indeed, institutional and legal dynamics between UK courts and the ECtHR have remained a thorny issue in what could be labelled CoE–UK relations. For example, a 2023 Council of Europe report noted that while Section 2 of the UK's Human Rights Act does not *stricto sensu* require national courts to follow ECtHR case law, it does encourage them to "take into account" relevant precedents in cases before them. [24] This provision has allowed UK cases to be effectively resolved domestically, with ECtHR reasoning correctly applied.

As a result, the UK has had the lowest number of ECtHR applications (and admissible applications) per capita in the CoE in recent years. According to the CoE, the UK also has a strong record of implementing ECtHR judgments. Presently, only 11 cases against the UK are pending before the CM, representing less than 0.2% of all pending cases. [25] Furthermore, 97.8% of the 490 judgments and decisions (including friendly settlements) issued by the ECtHR against the UK since 1975 have been fully implemented, with the cases subsequently closed by the CM. [26] This suggests that UK judges have applied the same legal reasoning as their ECtHR counterparts, fostering improved judicial dialogue between domestic and international courts. Matt Qvortrup has observed how "the British courts deliberately have developed a British interpretation of the European Convention on Human Rights, and in doing so, they have, arguably, created what almost amounts to a judge-made 'UK Bill of Rights'." [27]

Despite these successes, criticisms persist. In recent years, the ECtHR has faced accusations in the UK of ideological bias and an ever-expanding interpretation of declaratory rights, leading to what some perceive as an overly broad set of guiding principles. For example, in October 2024, *The Telegraph* reported a case in which a "paedophile avoids deportation under ECHR because it would be 'unduly harsh' on his children", while *The Times* covered an "Albanian burglar [who] wins right to stay in the UK", provoking media outrage and sparking public debate. [28]

---

23 George Katrougalos, *Report 17541: European Convention on Human Rights and national constitutions* (Strasbourg, CoE, 2023).

24 For more on the Human Rights Act, see Qvortrup, *The British Constitution*, pp.61-66.

25 hhttps://hudoc.exec.coe.int/ENG#{%22execdocumenttypecollection%22:[%22CEC%22],%22execlanguage%22:[%22ENG%22],%22execstate%22:[%22GBR%22],%22execisclosed%22:[%22False%22]}; some of these cases include the failure to protect two children from criminal prosecution despite a credible suspicion they were trafficking victims and shortcomings in the UK's secret mass surveillance regime.

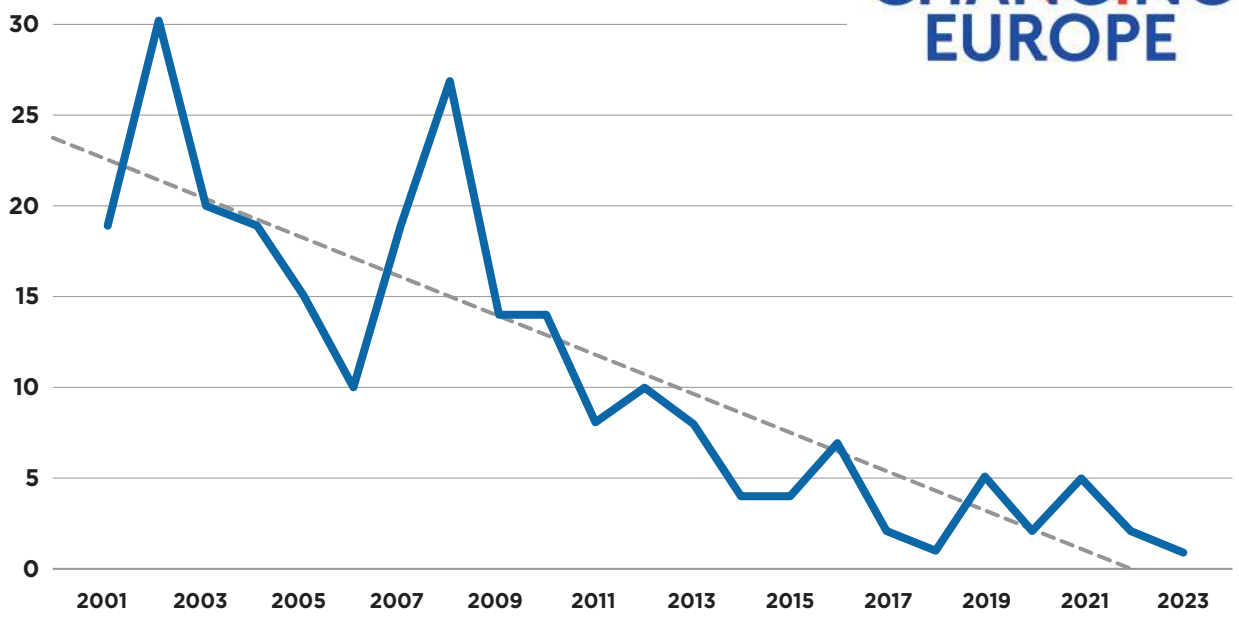
26 "Implementing ECHR judgments and decisions", *Infogram*, 13 December 2023, https://infogram.com/implementing-echr-judgments-and-decisions-december-2023-1h7v4pworzjmj6k?live.

27 Qvortrup, *The British Constitution*, p.66.

28 Alex Barton, "Paedophile avoids deportation under ECHR because it would be 'unduly harsh' on his children", *The Telegraph*, 28 October 2024, https://www.telegraph.co.uk/news/2024/10/28/paedophile-avoids-deportation-echr-harm-own-children/; Patrick Harrington, "Albanian burglar wins right to stay in UK", *The Times*, 7 October 2024, https://www.thetimes.com/uk/politics/article/albanian-burglar-wins-right-stay-uk-deportation-g7cmv6bp6.

**Figure 1. Judgments against the UK have declined since the Human Rights Act**

*European Court of Human Rights judgments against the UK finding at least one violation of a right, 2001-2023.*




*Source: Council of Europe, European Court of Human Rights, Annual Statistics 2023*

**Figure 2. Violations by Article and by State**

1959-2002

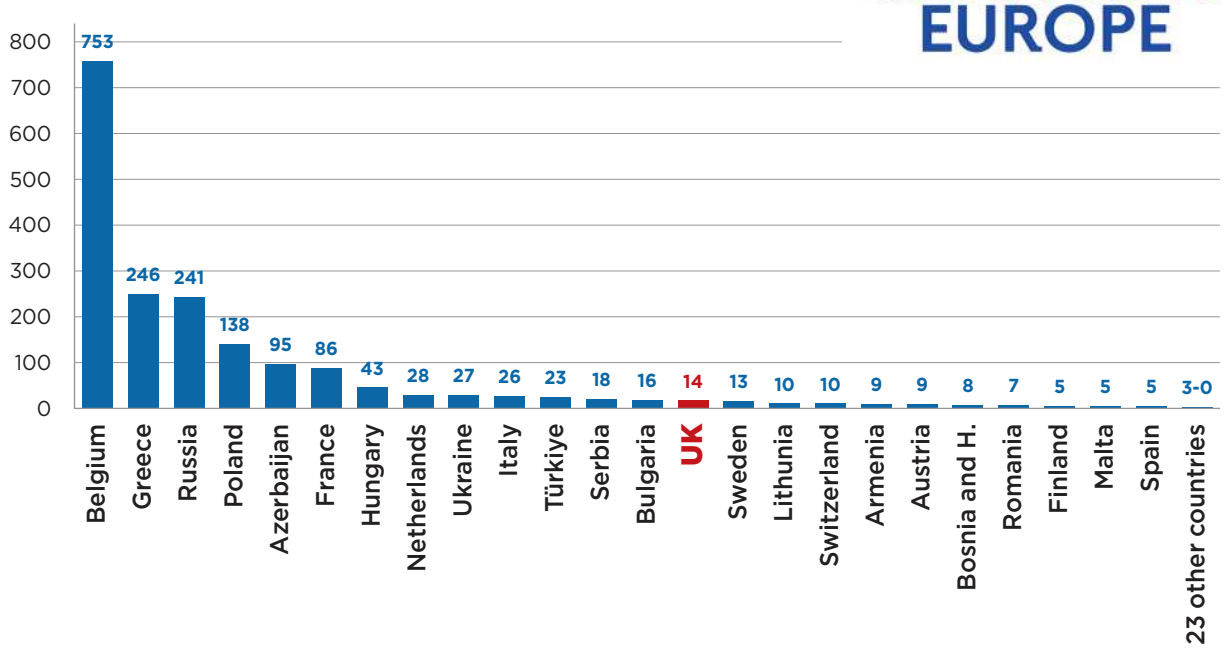
| | Total number of judgments | Judgments finding at least one violation | Judgments finding no violation | Friendly settlements/Striking-out judgments | Other judgments[1] | Right to life - deprivation of life | Prohibition of torture[2] | Inhuman or degrading treatment | Lack of effective investigation | Conditional violations[3] | Prohibition of slavery/forced labour | Right to liberty and security | Right to a fair trial[4] | Length of proceedings | No punishment without law | Non-enforcement | Right to respect for private and family life | Freedom of thought, conscience and religion | Freedom of expression | Freedom of assembly and association | Right to marry | Right to an effective remedy | Prohibition of discrimination | Protection of property | Right to education | Right to free elections | Right not to be tried or punished twice | Other Articles of the Convention |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Total | Total | Total | Total | 2 | 2 | 3 | 3 | 3 | 2/3 | 4 | 5 | 6 | 6 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | P1-1 | P1-2 | P1-3 | P1-4 | |
| Lithuania | 250 | 173 | 58 | 13 | 6 | 3 | 6 | | 33 | 10 | 1 | | 26 | 36 | 28 | 2 | 1 | 23 | 2 | 3 | 1 | | 8 | 7 | 33 | | 1 | 1 | 1 |
| Luxembourg | 52 | 37 | 12 | 3 | | | 1 | | | | | | 1 | 17 | 17 | | | 4 | | 3 | 1 | | 3 | 1 | 1 | | | | |
| Malta | 138 | 106 | 20 | | 12 | 1 | | | 4 | | 1 | | 27 | 13 | 14 | 1 | 2 | 7 | | 5 | | | 27 | 4 | 56 | | | | 2 |
| Republic of Moldova | 575 | 492 | 44 | 5 | 34 | 4 | 17 | 9 | 114 | 65 | | | 121 | 180 | 13 | 41 | 1 | 45 | 5 | 21 | 18 | | 63 | 7 | 160 | | 3 | 1 | 12 |
| Monaco | 4 | 3 | 1 | | | | | | | | | | 1 | 3 | | | | | | | | | | | | | | | |
| Montenegro | 71 | 65 | 4 | | 2 | | 1 | | 4 | 3 | | | 6 | 10 | 30 | 6 | | 5 | | 2 | | | 5 | 1 | 7 | | | | |
| Netherlands | 177 | 98 | 51 | 16 | 12 | | 4 | 1 | 10 | | | | 34 | 32 | 8 | | | 17 | | 7 | | | 2 | 3 | 1 | | | | |
| North Macedonia | 191 | 168 | 15 | 3 | 5 | 2 | 2 | 3 | 6 | 14 | | | 17 | 57 | 66 | 5 | | 10 | | 4 | 5 | | 11 | 2 | 15 | | | | 1 |
| Norway | 72 | 45 | 27 | | | | | | | | | | 1 | 12 | 2 | | | 23 | | 6 | | | | | 1 | 1 | | | |
| Poland | 1,254 | 1,057 | 137 | 42 | 18 | 7 | 9 | 2 | 67 | 15 | 1 | | 318 | 130 | 452 | 4 | | 127 | 1 | 38 | 1 | 2 | 43 | 5 | 59 | | | | 16 |
| Portugal | 373 | 285 | 23 | 56 | 9 | 2 | 6 | | 4 | | | | 7 | 42 | 144 | 6 | | 18 | | 31 | | | 43 | 2 | 48 | | | | |
| Romania | 1,754 | 1,541 | 91 | 48 | 74 | 14 | 59 | 2 | 380 | 99 | | | 125 | 481 | 152 | 55 | 4 | 118 | 4 | 40 | 6 | | 29 | 43 | 511 | 1 | 7 | 5 | 21 |
| Russian Federation | 3,500 | 3,317 | 121 | 18 | 44 | 363 | 419 | 89 | 1,190 | 291 | 45 | 1 | 1,494 | 1,076 | 209 | 170 | 4 | 395 | 20 | 139 | 128 | | 820 | 33 | 700 | 3 | 9 | 10 | 180 |
| San Marino | 22 | 14 | 5 | 2 | 1 | | | | | | | | 1 | 10 | 3 | | | 1 | 1 | | | | | | 1 | | | | |
| Serbia | 244 | 217 | 19 | 1 | 7 | | 3 | | 7 | 10 | | | 13 | 33 | 54 | 80 | | 18 | | 7 | | | 18 | 2 | 87 | | 1 | 2 | 1 |
| Slovak Republic | 422 | 378 | 13 | 22 | 9 | 3 | 3 | 1 | 6 | 6 | | | 62 | 53 | 224 | 2 | | 28 | | 11 | | | 41 | 4 | 22 | | | | 1 |
| Slovenia | 377 | 346 | 24 | 4 | 3 | | 3 | | 21 | 6 | | | 6 | 27 | 264 | 3 | 1 | 12 | | 3 | | | 267 | 3 | 9 | | | | |
| Spain | 206 | 143 | 56 | 3 | 4 | | 1 | | 1 | 14 | | | 5 | 67 | 16 | 1 | 4 | 22 | | 11 | 1 | | 2 | 5 | 2 | | | | 4 |
| Sweden | 157 | 62 | 62 | 28 | 5 | 1 | | 1 | 4 | | 5 | | 2 | 28 | 12 | 1 | | 10 | | 2 | 1 | | 3 | 1 | 6 | | | 1 | |
| Switzerland | 223 | 131 | 84 | 5 | 3 | 1 | 2 | | 2 | 1 | 7 | | 22 | 39 | 8 | | 1 | 27 | 1 | 20 | 2 | 1 | 2 | 8 | | | | 1 | |
| Türkiye | 3,900 | 3,458 | 100 | 219 | 123 | 143 | 225 | 31 | 348 | 229 | | | 843 | 991 | 609 | 70 | 6 | 140 | 13 | 426 | 117 | | 283 | 20 | 718 | 7 | 15 | | 37 |
| Ukraine | 1,840 | 1,800 | 23 | 4 | 13 | 14 | 78 | 22 | 383 | 131 | 1 | | 649 | 622 | 549 | 39 | 2 | 116 | 6 | 22 | 11 | 1 | 480 | 10 | 382 | | 6 | 2 | 82 |
| United Kingdom | 567 | 329 | 146 | 69 | 23 | 2 | 20 | 2 | 17 | | 1 | 2 | 70 | 97 | 30 | | 1 | 78 | 1 | 15 | 4 | 4 | 35 | 46 | 4 | 2 | 8 | | 2 |
| Sub-total | | 21,784 | 2,085 | 1,143 | 770 | 630 | 984 | 188 | 3,135 | 1,081 | 90 | 13 | 4,903 | 5,703 | 6,144 | 673 | 59 | 1,892 | 106 | 1,067 | 418 | 10 | 3,115 | 357 | 3,810 | 18 | 116 | 47 | 529 |
| TOTAL[4] | | 25,674 | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Although these instances of case-law are sometimes exaggerated or instrumentalised for political reasons by the press, such rulings arguably raise questions about whether the ECtHR bases its judgments strictly on legal grounds or on abstract, metaphysical principles, to borrow a Burkean phrase. Nonetheless, as explained above, there is a complex mechanism to enforce

ECtHR rulings for the most part, and the UK is rarely found in breach of the ECHR. When the government disputes interpretations, it often succeeds, as seen in the case of whole-life sentences, or achieves compromises, such as the resolution of the prisoner voting issue.

**Figure 3. Since 2017, an average of two interim measures have been issued per year in UK cases**

*Number of European Court of Human Rights interim measures granted against each country. Combined figures for 2017-19 and 2020-22.*




*Source: Council of Europe, European Court of Human Rights figures*

Public sentiment toward the ECHR in the UK reflects a complex picture. A recent poll conducted by Savanta between September and October 2024 found that 57% of respondents supported staying in the ECHR, compared with 22% who favoured leaving. Among 2024 Conservative voters, support for leaving ranged from 35% to 40%. Politically, the ECHR has become a contentious issue, particularly after former Prime Minister Rishi Sunak suggested in spring 2024 that he would prioritise his Rwanda initiative over ECHR membership.[29] This contrasted with the position of Lord Cameron, Sunak's Foreign Secretary, who in December 2023 pledged to pursue an immigration policy that "works for our country" while remaining "consistent with the ECHR".[30]

The leadership contest further exposed divisions within the Conservative Party. Finalist Robert Jenrick advocated for an immediate exit from the ECHR, while newly elected leader Kemi Badenoch took a more cautious approach, arguing that an obsessive focus on the Court risked overshadowing broader migration policy debates. As of April 2025, the official Conservative Party policy seems to be that the UK should consider disengaging from the ECHR if substantial reforms are not implemented. Overall, while the Conservative Party has identified legitimate concerns, its instinctive response of 'withdrawal' mirrors Brexit-era reflexes and overlooks the potential for meaningful reform.

[29] Chris Smyth, "Rishi Sunak ready to pull out of ECHR over Rwanda flights", *The Times*, 3 April 2024, https://www.thetimes.com/uk/article/rishi-sunak-sun-interview-never-mind-ballots-tory-poll-cwqndxch0.

[30] Steph Spyro, "David Cameron defends ECHR and insists UK will remain under European court's laws", *Express*, 5 December 2023, https://www.express.co.uk/news/politics/1842393/David-Cameron-ECHR-Rwanda.

The Labour Party, in contrast, has expressed strong support for the ECHR. Sir Keir Starmer affirmed in July 2024 that a Labour government would not consider leaving the Convention, framing it as integral to the UK's human rights reputation. The new Prime Minister immediately signaled a sharp break from the previous administration's stance and was part of a broader effort to "reset" relations with Europe and restore the UK's reputation as a reliable international partner. [31] Leslie Griffiths, Baron Griffiths of Burry Port, a long-standing member of the UK delegation to the Council of Europe, is of the same opinion. [32] In January 2025, Attorney General Lord Hermer addressed the PACE and unequivocally affirmed the UK's stance: Britain would 'never withdraw' from the ECHR nor ever 'refuse to compley with the judgements of the ECtHR, or requests for interim measures.' [33] Similar statements have been made by the Home Secretary, Yvette Cooper and other cabinet members. [34] In essence, continued participation in the Council of Europe is seen as non-negotiable by the Labour leadership. Nevertheless, a few voices within the Labour party have urged caution on specific issues: for instance, some newly elected Labour MPs from norther constituencies have supported reviewing Article 8 of the ECHR (the right to family life) to ensure it is not misused to prevent deportations. However, even these MPs stop far short of advocating withdrawal and it is a minority view that again underscores Labour's baseline of remaining in the ECHR. [35] In conclusion, this internal dialogue shows that while tactical approaches to human rights (especially in immigration policy) are being debated in the Labour party, virtually no one in Labour argues, in public at least, for leaving the ECHR or defying the Court.

Crucially, one development to note on the government side is the nuance in tone: Labour leaders now frequently couple their pro-ECHR stance with assurances that they will not allow human rights law to be "abused" to frustrate legitimate policy. This calibrated message has, thus far, led to reviews and planned legislation (e.g. an upcoming immigration White Paper) to adjust domestic law while staying in compliance. One possible development might relate to government action on how UK courts should balance Article 8 against public safety or by using existing leeway in the Convention.

Since at least 2007, successive UK governments have debated replacing the Human Rights Act with a 'Bill of Rights'. This policy emerged from concerns that ECtHR decisions were influencing politically sensitive areas, such as immigration, and infringing on subsidiarity – the principle that such decisions should rest with the UK Parliament. However, public opinion has largely favoured retaining the Human Rights Act. In two government consultations conducted in 2020 and 2021, the majority of respondents rejected proposals to introduce a Bill of Rights, even one that did not involve leaving the ECHR. [36] Unsurprisingly, Dominic Raab's 2022 Bill of Rights Bill, which sought to repeal and replace the Human Rights Act, failed to progress through Parliament.

---

31 Sir Keir Starmer to the Interpol General Assembly, 4 November 2024, https://www.gov.uk/government/speeches/pm-speech-to-the-interpol-general-assembly-4-november-2024#:~:text=Instead%2C%20we%20are%20approaching%20this,profound%20respect%20for%20international%20law.

32 Private interview with the author, House of Lords, 16 December 2024.

33 https://www.politico.eu/article/britain-lawmaker-obsess-european-court-again/#:~:text=Attorney%20General%20Richard%20Hermer%20told,".

34 https://hansard.parliament.uk/commons/2024-10-21/debates/1C62CD19-E945-46F7-949F-B2558123D251/OralAnswersToQuestions#:~:text=The%20purpose%20of%20setting%20up,were%20somehow%20abandoning%20international%20law.

35 https://www.politico.eu/article/britain-lawmaker-obsess-european-court-again/#:~:text=Tough%20talk%20on%20Britain's%20borders,migrants%20arriving%20on%20Britain's%20shores.

36 Ministry of Justice, "Independent Human Rights Act Review", GOV.UK, 7 December 2020, https://www.gov.uk/guidance/independent-human-rights-act-review; Ministry of Justice, "Human Rights Act Reform: A Modern Bill of Rights", GOV.UK, 14 December 2021, https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights; Sarah Lambrecht, "Reforms to Lessen the Influence of the European Court of Human Rights", *European Public Law* 21 (2) (2015); pp.257-283.

The Brighton Declaration of April 2012 marked a watershed moment in ECtHR reform. Spearheaded by the UK during its chairmanship of the CoE's CM, the declaration addressed concerns about the Court's backlog and perceived jurisdictional overreach. It led to the adoption of Protocol No. 15, which introduced stricter admissibility criteria, reinforced the principle of subsidiarity and emphasised the margin of appreciation afforded to national governments. While these measures did not resolve all challenges facing the ECtHR, they streamlined procedures and reinforced the Court's legitimacy by promoting shared responsibility among member-states for safeguarding human rights. [37] As M.R. Madsen observed, "the Brighton Declaration and its associated Protocols, by precipitating change at the Court, have achieved exactly what they set out to do." [38] Interestingly, on 26 February 2025, during his Lord Speaker's Lecture in the House of Lords, the President of PACE, Dr Theodoros Roussopoulos, referred to the Brighton Declaration and its accomplishments as an effective example of how reform can be achieved from within.

[37] Mikael Rask Madsen, "Rebalancing European Human Rights: Has the Brighton Declaration Engendered a New Deal on Human Rights in Europe?", *Journal of International Dispute Settlement* 9 (2) (2018): pp.199-222.

[38] Ibid., p.199.

# 3. A Diagnosis: Shortcomings and Structural Flaws

## *What is wrong with the Strasbourg Court?*

There appear to be two key issues with the functioning of the Court in Strasbourg: first, the ever-expanding list of human rights recognised through its judgments and second, the process by which the judges responsible for administering these decisions are elected.

## 3.1. First problem: Ever-expanding list of rights

Opened for signature in Rome in November 1950, the ECHR transformed a dozen key rights from the declaratory UN Universal Declaration on Human Rights into a legally binding European text. The original list included fundamental rights such as the right to life; the prohibition of torture; the prohibition of slavery and forced labour; the right to liberty and security; the right to a fair trial; the right to respect for private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association; the right to marry; the right to an effective remedy; and the prohibition of discrimination in exercising these rights.

Over the following decades, the Convention's scope expanded through subsequent protocols ratified in Strasbourg. For instance, the right to education was introduced in Protocol No. 1 (March 1952); the prohibition of expulsion of nationals in Protocol No. 4 (September 1963); procedural safeguards for the expulsion of aliens in Protocol No. 7 (1984); and the general prohibition of discrimination in Protocol No. 12 (November 2000).[39] It is worth noting that as the initial list grew, it began to include terms whose definitions, or qualifications as human rights, were increasingly ambiguous.

While some degree of expansion is expected in the development of any new legal framework, it can be argued that the human rights protected under the Convention have, in certain areas, exceeded the boundaries envisioned by its original drafters. Crucially, many of the rulings criticised in British media are not rooted in the original list of rights but rather in these later additions. Sir Noel Malcolm aptly noted that over time, [the Court] has extended the scope of the rights in the European Convention far beyond their actual meaning, making tendentious use of what it calls the aims and purposes of the Convention.[40] As Edmund Burke observed in his critique of Thomas Paine's *Rights of Man*, human rights are not concerned with everything morally significant but rather with those principles that can be positively affirmed through legislative and legal processes.[41]

One of the fundamental problems with ECtHR judgments stems from this ever-expanding list of 'human rights', sometimes developed by the Strasbourg Court in response to ideological or political sensitivities. This is exacerbated by the fact that, as noted earlier, not all ECtHR judges are career jurists.

Another key issue relates to the original legal basis of human rights law. The Convention was a treaty entered into in *bona fides* by governments, committing them to the terms of that specific document. While the interpretation of treaties allows for some flexibility, extending

[39] Bond, *The Council of Europe*, p.69.

[40] Malcolm, *Human Rights and Political Wrongs,* https://judicialpowerproject.org.uk/commentary-on-sir-noel-malcolms-human-rights-and-political-wrongs/.

[41] A recent example of this tendency can be affirmed in the ECtHR's ruling against the Swiss Government in April 2024, setting a legal precedent that might encourage future climate litigation, https://commonslibrary.parliament.uk/a-new-precedent-for-climate-change-in-human-rights-law/.

protected rights to encompass matters clearly beyond the intent of the original signatories jeopardises the legal authority of the Convention and risks undermining its legitimacy. [42]

The structural flaws within the ECtHR, particularly the ever-expanding interpretation of human rights and the appointment process for judges, have profound implications beyond theoretical concerns. These issues manifest most visibly in politically sensitive domains such as immigration law, where the Court's rulings frequently challenge national sovereignty and strain public confidence in its decisions, as observed above in the case of the UK press. By broadening the scope of rights like "private and family life" to include protections for foreign nationals facing deportation, the ECtHR has triggered debates about the balance between individual rights and collective public interests. [43] These rulings highlight how judicial decisions, shaped by the structural and ideological biases of the Court, can significantly influence national policies and political discourse.

The ECtHR has played a pivotal role in shaping the human rights dimensions of immigration law across Europe. Over time, it has developed extensive case law aimed at safeguarding the rights of foreign nationals within the jurisdiction of member-states, particularly in cases where deportation may infringe on their Convention rights. [44] Article 8 of the ECHR, which protects the right to private and family life, has been central to many such rulings, offering a framework for challenging deportation orders. However, critics argue that the Court's reliance on Article 8 has expanded the interpretation of rights beyond what was originally intended, creating friction between Strasbourg's judgments and national sovereignty. For example, this was recorded on 25 April 2024, when the UK Parliament passed a law prohibiting national judges from taking account of the ECtHR's interim measures against the transfer of illegal immigrations to Rwanda, The Safety of Rwanda (Asylum and Immigration) Act 2024. Before the passage of the said Act by Parliament, British courts had required the government to comply with the interim measures of the ECtHR. When Labour came into power, it very quickly repealed this Act, rendering the country responsible under the *status quo ante*.

In practical terms, the ECtHR often employs interim measures under Rule 39 to suspend contentious deportation proceedings. While these measures aim to prevent irreparable harm, their binding nature remains controversial. Governments such as the UK's contend that these provisional decisions hinder their ability to enforce immigration policies, particularly when they involve individuals convicted of serious crimes. The Court, however, asserts the implicit consent of member-states to abide by these measures under Article 34 of the Convention. This legal rationale has exacerbated tensions between the Court's moral principles and the political realities facing governments, leading to accusations of judicial overreach and ideological bias.

Recent rulings exemplify the contentious nature of the ECtHR's approach to immigration. On 12 November 2024, the Court adjudicated three cases concerning Denmark's deportation of foreign criminals: *Sharafane (n°5199/23)*, *Savuran (n°3645/23)* and *Al-Habeeb (n°14171/23)*. In the first case, the ECtHR condemned Denmark for deporting an Iraqi cocaine trafficker, whilst in the other two cases, the Strasbourg Court upheld the deportation of a Turkish cocaine trafficker and an Iraqi convicted on numerous occasions of violence and assault, including stabbings, as well as attempted theft. While the Court upheld two deportations on the basis that the applicants could reapply for family reunification after their re-entry bans, it introduced a controversial new principle in *Sharafane*: the "guarantee of return". This principle asserts

42 For more on this, see Malcolm, *Human Rights and Political Wrongs*, pp.63-99.

43 It must be observed that this is also reinforced by Article 3 of the ECHR, referring to the prohibition of inhuman and degrading treatment and the principle of non-refoulement.

44 For example, see Charles Hymas, "Albanian murderer wins right to stay in the UK under ECHR", *The Telegraph*, 11 October 2024, https://www.telegraph.co.uk/news/2024/10/11/fatmir-bleta-albania-echr-home-office-right-to-stay/.

that deportations violate Convention rights if individuals lack a realistic pathway to legal re-entry after their re-entry bans expire. Critics argue that this development represents a judicial overreach, "discovering" rights that were neither explicitly included in the Convention nor envisioned by its drafters.

The implications of such rulings are far-reaching. National governments, particularly those grappling with rising public scepticism toward immigration, perceive these decisions as undermining their capacity to enforce border control and uphold public safety. In the UK, cases such as the ECtHR's intervention in blocking the deportation of foreign nationals have been widely publicised, with media outlets portraying the Court as prioritising individual rights over collective interests. Such narratives fuel perceptions of a disconnect between Strasbourg's judicial priorities and the lived realities of member-states, further politicising the Court's role in immigration cases.

The tension between the ECtHR's expansive interpretation of human rights and the sovereignty of member-states is emblematic of broader challenges in balancing individual protections with public interests. Critics contend that the Court's approach to Article 8 has evolved into a mechanism for challenging almost any deportation order, often disregarding the legitimate policy objectives of elected governments. This critique has been particularly pronounced in states such as the UK, where immigration control is a politically sensitive issue.

Nevertheless, the ECtHR's rulings are not without merit. By preventing deportations in cases involving torture risks or family separation, the Court upholds fundamental human rights that are core to the ECHR. However, the evolving scope of rights such as "private and family life" has strained the principle of subsidiarity, which mandates that national authorities should have primary responsibility for interpreting and applying the Convention. Strengthening subsidiarity in the spirit of the Brighton Declaration and Protocol No.15 could offer a solution, allowing member-states greater discretion in implementing rulings while preserving the Court's oversight in cases of clear human rights violations.

## 3.2. Second problem: Appointment of judges

The expansive interpretation of rights by the ECtHR is not merely a function of judicial philosophy but is also influenced by the backgrounds, affiliations and professional trajectories of the judges themselves. As noted, many judges lack extensive judicial experience in their home jurisdictions, with a significant proportion having ties to NGOs that often advocate for a progressive expansion of rights. This trend suggests that the structural flaws in the appointment process – such as inadequate vetting and overrepresentation of non-career jurists – may predispose the Court to a jurisprudential approach that prioritises ideological frameworks over strict adherence to the Convention's original intent.

This brings us to the second structural flaw of the ECtHR: the appointment of judges. As noted earlier, the Brighton Declaration reinforced the principle that national authorities –namely courts and governments – are best positioned to interpret and apply the ECHR, provided they adhere to its principles. Additionally, the Declaration emphasised the margin of appreciation, granting member-states some discretion in balancing individual rights with public interests. It remains the most significant reform effort to date, with its impact positively evaluated by experts and policymakers against a systematic exploration of the ECtHR's case law. [45]

However, one critical issue overlooked or underappreciated by the Brighton Declaration pertains to the institutional process for electing judges to the ECtHR and their potential

[45] Madsen, "Rebalancing European Human Rights".

political backgrounds. ECtHR judges do not operate in a political vacuum; beneath the *façade* of impartiality, there is occasionally evidence of ideological bias. The selection process for judges is systemically flawed, revealing patterns of ideological and institutional allegiance that undermine confidence in the Court's impartiality. More specifically, according to a recent report by the Strasbourg-based European Centre for Law and Justice (ECLJ), 22 of the 100 judges who have served since 2009 were previously employed by or had strong affiliations with seven interconnected NGOs active at the ECtHR. This raises concerns about the impartiality of the Court, falling short of the standards upheld by other major judicial bodies.

A structural problem of conflicts of interest persists within the ECtHR despite documents advocating judicial independence, such as the 2 September 2021 Resolution on Judicial Ethics and the 20 March 2023 Practice Directions on third-party interventions, which set out the rules and procedures for non-parties, such as states, NGOs, or individuals to provide impartial legal or factual insights to assist the Court in its decision-making, ensuring relevance, objectivity, and procedural fairness. [46] According to further research by the ECLJ, between 2009 and 2019, 18 judges ruled 88 times on cases introduced or supported by NGOs with which they were previously associated. [47] From 2020 to 2022, 54 additional cases of conflicts of interest were recorded, including 18 involving Grand Chamber judgments – the ECtHR's most significant decisions – concerning 12 of the Court's 46 judges. [48] These conflicts of interest contradict basic principles of judicial ethics and raise concerns about the Court's impartiality, as well as its susceptibility to political or ideological influence.

Kanstantsin Dzehtsiarou and Alex Schwartz's analysis of the Court's composition highlights a further link, this time between geographical origin and professional background. More concretely, judges from Northern and Western Europe predominantly come from national judiciaries, whereas their counterparts from Central and Eastern Europe more often have academic or other professional backgrounds, including affiliations with NGOs. [49] This disparity contributes to challenges in ensuring sufficient expertise in general international law and domestic legal systems. [50] In other words, substantial professional experience in their country of nationality is vital for Strasbourg judges, not only for "functional" reasons but also for "legitimacy" purposes.

Research into the Court's legitimacy further underscores these concerns. A survey of UK policy stakeholders and judges revealed that 50% identified the qualifications and experience of ECtHR judges as a problem undermining the institution's legitimacy. [51] Comparisons between ECtHR judges and UK Supreme Court peers were unfavourable, with similar criticisms echoed in other national contexts. The authors of the study concluded that concerns about the quality of the judges are not merely routine criticism but signal legitimacy erosion and reflect deeper trends that undermine respect for the institution. [52]

Furthermore, inadequate impartiality standards extend to the Court's registry. For instance, ECtHR judges are not required to publish declarations of interest, and the handling of cases

46 ECtHR, "Resolution on Judicial Ethics", adopted by the Plenary Court on 21 June 2021 (Strasbourg, 2021), https://www.echr.coe.int/documents/d/echr/Resolution_Judicial_Ethics_ENG; ECtHR, "Practice Directions", 20 March 2023 (Strasbourg, 2023).

47 Gregor Puppinck and Delphine Loiseau, *NGOs and the Judges of the ECHR: 2009-2019* (Strasbourg, ECLJ, 2020).

48 Gregor Puppinck, *The Impartiality of the ECHR: Concerns and Recommendations* (Strasbourg, ECLJ, 2023).

49 Kanstantsin Dzehtsiarou and Alex Schwartz, "Electing Strasbourg", p.234.

50 David Kosar, "Selecting Strasbourg Judges: A Critique", in Michal Bobek (ed.), *Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts* (Oxford: Oxford University Press, 2015), pp.145-149.

51 Basak Cali, Anne Koch and Nicola Bruch, "The Legitimacy of the European Court of Human Rights: The View from the Ground", Department of Political Science, University College London, 2011.

52 Ibid.

often lacks transparency, undermining the right to a fair trial. A formal procedure for the recusal or challenge of ECtHR judges was only established on 22 January 2024, following four years of debate. While this development is a step forward, the lengthy process highlights the difficulties in achieving reform, even in areas of technical but critical importance. [53]

Nonetheless, the successful establishment of a recusal procedure demonstrates that reform is possible. As suggested below, dual pressure through PACE and the CM could advance meaningful improvements to the Court's operations and standards.

[53] ECtHR, *Practice Direction, Recusal of Judges*, 22 January 2024 (Strasbourg, 2024).

# 4. What is to be done?

## *Reform from within*

Although many UK ministers and policymakers have recognised many of the flaws described above, there is little consensus on the alternatives. The first option is the UK departing from the ECHR. There are important arguments against this option, particularly due to the international consequences such a decision would necessarily entail. More specifically, leaving the ECHR would directly violate the Belfast/Good Friday Agreement, which mandates that the ECHR remains a part of the legal framework in Northern Ireland. This breach would have further implications for the UK's relationships with Ireland and the EU, potentially straining diplomatic ties and undermining stability in the region. Furthermore, the governing agreement of the post-Brexit relationship between the UK and the EU (also known as the UK–EU Trade and Cooperation Agreement) requires both parties to adhere to the ECHR in matters concerning human rights protection. As far as it has been declared, the official stance of the EU mandates that if the UK were to withdraw from the ECHR, it would terminate this provision of the agreement, risking further disruptions in UK–EU relations, particularly on security cooperation and data sharing. [54]

But perhaps more important than the legal and diplomatic ramification of such a move is that the UK's moral standing on the global stage would be affected. As was mentioned above, the UK has one of the strongest records of compliance within the ECtHR and a decision to withdraw would set a dangerous precedent for other countries with less robust records. This would undermine the UK's ability to advocate for human rights globally and diminish its reputation for holding both itself and other nations accountable. In other words, how can the UK's moral authority as a supporter of Ukraine and others service its departure from the CoE? For, as was observed above, to sever ties with the ECHR is, *en effect*, to withdraw, or worse be expelled, from the CoE entirely, as happened in the case of the Russian Federation in 2022 (when the UK spearheaded the movement to expel Russia). Considering these legal, international and moral challenges, the question remains: what is the right course of action?

## 4.1. Policy Recommendations

Instead of withdrawing from the CoE and the ECHR, the UK should spearhead reform efforts in collaboration with like-minded member-states and continental political forces. Critics such as Suella Braverman MP, former Home Secretary, have argued that reform is futile and that previous attempts have yielded limited results. [55] However, as evidenced by initiatives like the Brighton Declaration, coordinated and strategic plans – rather than reactive measures – can achieve meaningful progress and influence the ECtHR's direction, particularly in areas such as subsidiarity and the margin of appreciation.

The timing is propitious for the UK to lead this debate. Growing discontent among European electorates over immigration and integration policies, the rise of centre-right and right-wing governments, and increasing scepticism regarding judicial activism have created fertile ground for reform. Unlike earlier efforts to reform the EU's inner workings, there is now greater appetite on the continent for changes to the ECtHR that align with UK interests. Conservative MPs

[54] European Parliament Resolution (23 November 2023), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0436_EN.html?utm_source=chatgpt.com; "Questions & Answers: EU-UK Trade and Cooperation Agreement," EC, 24 December 2020, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_20_2532/QANDA_20_2532_EN.pdf?utm_source=chatgpt.com.

[55] "Suella Braverman on two-tier policing, ECHR 'overreach', and why she would have voted for Trump", interview with Gus Carter for *The Spectator*, *YouTube*, 25 November 2024, https://www.youtube.com/watch?v=3RzOdb7AKvM&t=917s.

could play a pivotal role in forging alliances in Strasbourg, even as they sit in the opposition green benches in London. Securing a political alliance and a working majority in favour of reform within PACE and the Judges Committee would be a critical first step.

How is this to be attained? The Conservative-led European Conservatives Group and Democratic Alliance (EC/DA), with 76 members, could potentially collaborate with the European People's Party (EPP), which boasts over 130 members.[56] Together with independents and reform-minded representatives from other parties, these groups could potentially form a majority in the 612-seat PACE. Of course, political challenges persist, and every such attempt would override right-wing sectarianism. According to Lord Russell of Liverpool, a former member of the EC/DA group in Strasbourg, the working relationship of this group and the EPP has been minimal in recent years. This is partly attributable to the Democratic Alliance's leadership of the group and the influence of right-wing disruptors such as its current chair, Tom Van Dyke, nominated by Hungary's Fidesz and Poland's Law and Justice Party. Historically, divisions within right-wing factions have hindered cooperation. However, a shared vision for reforming the ECtHR presents an opportunity for collaboration.

It should also be reminded that there are forces within the EPP group, particularly those from Spain, Italy and Greece, who share this goal for ECtHR reform. More specifically, common themes across EPP parties include preserving sovereignty, respect for national identity, restoring the margin of appreciation and encouraging judicial restraint. Key players in the EPP, such as Les Républicains (France), CDU/CSU (Germany), Civic Platform (Poland), New Democracy (Greece), People's Party (Spain), Forza Italia (Italy), KDNP (Hungary), and KOK (Finland), share common priorities regarding the role of the ECtHR. They seek to ensure that member states retain control over politically sensitive issues, including migration, criminal justice, and family law. Additionally, they aim to prevent the ECtHR from imposing uniform interpretations of rights that could conflict with national legal traditions. Reinforcing the principle of subsidiarity is another key objective, ensuring that national courts take the lead in applying human rights standards. Overall, both the EC/DA and the EPP appear to share concerns about the perceived ideological expansion of ECtHR jurisprudence.

As for the current UK government, given the internal discussions within the Labour Party and recent statements by senior government figures, there appears to be growing interest in pursuing targeted reform of the Convention – particularly with respect to the interpretation of Article 8 in cases relating to migration and national security. While remaining committed to the UK's membership in the Council of Europe, a Labour government could follow the precedent of the Brighton Declaration, which enabled surgical reform through consensus-building rather than withdrawal. The appropriate vehicle for such a reform agenda would be the Committee of Ministers, where the UK can advocate for a recalibration of the Convention's institutional framework in line with democratic legitimacy and national sovereignty. By building a coalition of major financial contributors to the CoE and the Court, the UK could promote a modernisation agenda grounded in legal pragmatism. The UK's Permanent Representative in Strasbourg would be well placed to spearhead these efforts – working within the established diplomatic architecture to advance specific reforms, including those outlined in this paper.

All in all, enhanced scrutiny of judicial appointments at the committee level, combined with reform-focused reports in PACE, could catalyse changes within the CM, the decisive body of the CoE. Even if some national governments remain reluctant, these efforts could significantly shift the dynamics in Strasbourg.

[56] Current members taking the Conservative whip include Alicia Kearns MP, Sir Christopher Chope MP and the Rt Hon. Lord Keen of Ellie.

Leading reform efforts within the CoE offer the UK a unique opportunity to reconcile domestic priorities with international commitments. At a time when public scepticism toward the ECHR is growing, particularly regarding immigration rulings, spearheading reform would enable the Government to address concerns over sovereignty and judicial overreach without reneging on its obligations. On the international stage, UK leadership would bolster its moral authority as a global advocate for human rights, especially as it continues to support Ukraine and other nations resisting authoritarian threats. Proactive engagement would also prevent states with weaker human rights records from dominating the ECtHR's agenda, thereby safeguarding the institution's integrity. Reforming the ECtHR from within thus serves both the UK's national interest and its reputation as a principled leader in Europe and beyond.

In this context, the following five proposals outline practical steps to reform the ECtHR:

1. **ECtHR Judges' Declarations of Interest:** Judges should be required to publish declarations of interest, including any connections to NGOs, in line with the Committee of Ministers' 2010 recommendations on "Judges: Independence, Efficiency, and Responsibilities".

2. **Transparency in the Court's Registry:** The ECtHR should ensure transparency in its registry and member impartiality by publishing a comprehensive list of its members, following best practices from the European Court of Justice and the Inter-American Court of Human Rights.

3. **Nomination Criteria:** Nomination criteria should prioritise substantial judicial experience while requiring full transparency regarding candidates' affiliations, including past NGO involvement, to uphold judicial balance and credibility.

4. **Strengthening the Vetting Process:** The PACE Selection Committee, alongside the Expert Advisory Panel for judge appointments, should receive sufficient resources and time to conduct thorough assessments of candidates.

5. **Live Broadcast of Interviews:** Broadcasting interviews conducted by the Judges Committee would enhance transparency and public scrutiny, discouraging unqualified candidates from applying.

While these proposals present a feasible pathway to reform, their implementation is not without challenges.

It is possible that some CoE member-states, particularly those led by centre-left or left-wing governments, may oppose stricter nomination criteria for ECtHR judges. They could argue that such measures infringe upon their sovereignty or disproportionately favour Western European perspectives over other regional interests. However, stricter criteria would enhance the credibility and impartiality of the Strasbourg Court, benefiting all member-states by reducing perceptions of bias and politicisation. Framing these reforms as a collective effort to strengthen the ECtHR's legitimacy, and emphasising the multilateral consensus achieved through precedents like the Brighton Declaration, would make them more appealing to both long-standing and newer CoE members.

The UK can build coalitions with like-minded states, such as the Nordic countries and Germany, which share a commitment to transparency and judicial accountability. These alliances could spearhead a collective reform effort. Informal working groups within PACE could be instrumental in drafting proposals that balance diverse perspectives and ensure broad-based support. Additionally, focused consultations with smaller but influential member-states could help create momentum for change.

Another counterargument suggests that reforming the judicial selection process and introducing declarations of interest could be administratively burdensome, requiring significant resources and time. However, there is no need to reinvent the wheel. Proposed reforms align with established best practices in other international courts, such as the ECJ and the Inter-American Court of Human Rights and can be adapted accordingly. To address concerns about feasibility, the UK could advocate for targeted pilot programmes, such as requiring declarations of interest for newly appointed judges before extending the practice to all current judges.

Reform efforts also risk alienating domestic constituencies. Sceptical audiences, particularly within the Conservative Party and Reform UK, may view these measures as insufficient to address concerns over sovereignty and judicial overreach. To mitigate this, the Conservative Party should engage with its voters and policy stakeholders, clearly explaining how these reforms address key issues of transparency and judicial accountability while preserving the UK's global standing. It should also highlight the potential diplomatic fallout of leaving the ECHR *and* the CoE. By capitalising on past successes, such as the UK-led Brighton Declaration (under the leadership of David Cameron and Justice Secretary Ken Clarke), the Conservative Party can demonstrate that reform is both achievable and impactful.

Stricter nomination criteria could unintentionally exclude qualified candidates or disproportionately disadvantage smaller states with limited judicial resources. To counter this, additional resources and capacity-building initiatives could be offered to these states to help them identify and nominate strong candidates. The UK could propose technical assistance programmes within the CoE to support member-states in preparing nominations that meet the enhanced criteria.

Finally, it might be argued that abolishing *in camera* deliberations of the Judges Committee could deter qualified candidates, particularly career jurists, who may be unaccustomed to public speaking. Nevertheless, the ability to engage in public dialogue should be an expectation for judges serving on one of Europe's most significant courts, whose decisions impact millions of citizens across member-states. While reviews or interviews may dissuade some candidates, they are a necessary component of transparent judicial selection processes and should not be avoided.

For any negotiating strategy to be effective, the negotiating party must be prepared to walk away from the table. The rationale behind the proposed exit of the United Kingdom from the Council of Europe and the European Court of Human Rights (ECtHR) should be considered a *ultimum refugium* – a last resort – and with an important caveat: the UK should not depart alone. Additionally, such exit might take place temporarily for accession under a reformed court.

As of 2024–2025, the Council of Europe's total budget stands at €624.6 million, with the Ordinary Budget accounting for €299.3 million. The United Kingdom, Germany, France, and Italy are the largest contributors to the organisation. Each of these countries contributes just over €37.18 million to the Ordinary Budget. Combined, their contributions amount to approximately €148.72 million, representing nearly 50% of the Ordinary Budget. In addition, each country provides around €668,000 in voluntary contributions to the Extraordinary Budget, collectively adding approximately €2.67 million to the Council's funds. These figures underscore the significant financial support provided by these four countries to the Council of Europe and its judicial arm, the ECtHR. [57]

[57] These figures are based on the Council of Europe's Programme and Budget for 2024–2027. The Council's budget is primarily funded by mandatory and voluntary contributions from member states, with the Ordinary Budget covering core activities and the Extraordinary Budget supporting additional initiatives. See, https://revuedlf.com/cedh/what-financial-resources-does-the-council-of-europe-have-or-need/.

This financial stake affords them a strong negotiating position. If a radical decision to exit is to be considered, it should be negotiated collectively between the national governments of these four countries – two of which currently have conservative governments, whilst France's government appears increasingly critical of the ECtHR. [58] Such an option should be pursued only if all reform efforts have been exhausted and actively resisted, and even then, only on the condition that a coordinated withdrawal is agreed upon as a means of exerting pressure. Otherwise, the same reputational and diplomatic costs previously identified in this report will apply to the United Kingdom's international standing. That said, even with those costs, a failure to secure reform might lead to significant political pressures in the UK that no government will be able to ignore, as ultimately occurred in the case of Brexit, where European Union reforms proved insufficient to appease a British public desiring more radical change. For all those concerned about the possibility of a similar UK exit from ECtHR – both at home and abroad – the playbook is therefore clear. Secure meaningful reform now. Or rue the potential consequences later.

[58] See, for example, the speech of France's Interior Minister, Bruno Retailleau at the Policy Exchange, 31 March 2025, https://policyexchange.org.uk/events/the-islamist-challenge-how-should-free-societies-now-respond/.

## 5. Conclusion

The UK stands at a crossroads where decisive leadership can shape the future of human rights in Europe. By spearheading reform, the UK can safeguard its moral authority, address domestic concerns and strengthen international alliances. The UK should not retreat but lead, for to conserve is to reform. Churchill's vision of a Europe united by justice and freedom remains as relevant today as ever, particularly his emphasis on collaboration that respects the sovereignty of member-states.

The ECHR embodies principles deeply rooted in British legal traditions, including the protection of individual freedoms and the rule of law. As a founding member of the CoE, the UK has consistently championed these values. By building on this legacy, the UK is uniquely positioned to lead the next phase of reforms, ensuring that the ECtHR remains transparent, impartial and prepared to meet the challenges of the 21st century. Ultimately, the expansive interpretation of human rights and the structural weaknesses in the judicial appointment process are two sides of the same coin. Addressing the latter through targeted reforms will not only bolster the impartiality and credibility of the Court but will also ensure that its jurisprudence remains faithful to the Convention's intended balance between individual rights and state sovereignty.

Through principled leadership and practical reforms, the UK can reaffirm its commitment to human rights while ensuring the ECtHR remains a guardian of justice, not an arbiter of ideology.

Title: “REFORM TO CONSERVE: A NOVEL APPROACH TO THE UK AND THE ECTHR VIA THE COUNCIL OF EUROPE”
By Dr Ioannes de Fabbri-Chountis, PhD



The Henry Jackson Society
Millbank Tower, 21-24 Millbank
London SW1P 4QP, UK

**www.henryjacksonsociety.org**


HJS
Henry
Jackson
Society

CENTRE FOR RESILIENT SOCIETY

DEMOCRACY | FREEDOM | HUMAN RIGHTS

April 2025