## Grand Committee

# Monday, 24 November 2008.

**The Committee met at half-past three.**

[The Deputy Chairman of Committees (LORD COLWYN) in the Chair.]

## Human Rights Judgments: Joint Committee on Human Rights Report

**3.30 pm**

**Lord Lester of Herne Hill** rose to move that this House takes note of the Report of the Joint Committee on Human Rights, *Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008* (31st Report, HL Paper 173).

The noble Lord said: I am a member of the committee, as are the noble Lords, Lord Dubs and Lord Bowness, who I am delighted to say will be contributing to the debate. The report was published on 7 October, although many of its recommendations were made much earlier. We welcome the fact that the noble Lord, Lord Bach, will reply to the debate, and we hope that he will be able to be more positive in his response than ministerial colleagues in his department have been hitherto. We are greatly indebted to our highly skilled and overworked staff, parliamentary clerks, legal advisers and other staff for their outstanding support. Without their skill, judgment and dedication, the committee could not publish well informed and timely reports, often at short notice.

The subject matter of the report is not theoretical, esoteric or arcane. It concerns the practical and effective protection of the fundamental human rights and freedoms of everyone within this jurisdiction by Parliament, the Executive and the judiciary. The UK, like every other state party to the convention, is bound by Article 1 to secure the convention rights to everyone within its jurisdiction. The UK is bound by Article 13 to provide effective British remedies for breaches of the convention rights. The UK, like every other state party, is also bound by Article 46 to abide by judgments of the European Court of Human Rights in cases where the UK is a party. Where the Strasbourg court gives judgments against other countries on issues of general importance and relevance to all state parties, which in legal Latin is erga omnes, it is also essential for third-party states to give effect to them, even though they are not parties to the particular case. That is why, for example, Cyprus and Ireland promptly gave legislative effect to the Strasbourg court's judgment in the prisoners' voting rights case against the UK.

The convention system is based on the three linked pillars of human rights, the rule of law and democracy. It requires a working partnership between European and national institutions and adherence to the governing principle of subsidiarity, which means that European supervision comes into play only where national systems are unable to provide effective protection and redress. The convention institutions—the court, the parliamentary assembly and the Committee of Ministers—depend

on the legislative, executive and judicial authorities in each of the 47 member states of the Council of Europe to give prompt and full effect to the Strasbourg court's judgments, in the interests of the citizens of Europe and of the European rule of law.

The British judiciary has responded well to the pressing need to give domestic legal effect to convention rights. It did its best even before the Human Rights Act required it to interpret and apply domestic law compatibly with the convention rights. The case law under the Human Rights Act is highly influential and persuasive in the Strasbourg court. The problem of implementation arises not with our courts but with the political branches of government.

At the European level, the Strasbourg court is overwhelmed with more and more cases. According to the court's annual report for 2007, in 2007 the number of pending cases increased by about 15 per cent in a single year, from 90,000 to 103,000. While the Russian Federation refuses, alone among the 47 contracting states, to ratify Protocol 14 to the convention, the court is seriously hampered in its efforts to tackle the problem.

The Committee of Ministers supervises the execution of the judgments of the Strasbourg court to ensure that appropriate and necessary individual and general measures are put in place. Great stress is placed on the monitoring system by the exponential increase in the number of application lodged with the European Court. At the end of last year, some 6,248 cases were pending before the Committee of Ministers in its supervisory capacity.

Last June, a colloquy was organised in Stockholm entitled, "Towards stronger implementation of the European Convention on Human Rights at national level". The noble Earl, Lord Onslow, attended, representing the Joint Committee on Human Rights. The chair of the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights, Mr Schorm, noted that very few parliamentary mechanisms exist with a specific mandate to verify compliance with ECHR requirements, but he singled out the work done by the JCHR as,

> "a rare example of the existence of a special parliamentary body with a specific mandate to verify and monitor the compatibility of national law and practice with the JCHR".

As the report notes in paragraph 6, we have made a number of recommendations designed to improve the UK's domestic mechanisms for the implementation of judgments finding breaches of human rights. We called on the Ministry of Justice to adopt a central, co-ordinating role in government to ensure the effective and efficient implementation of adverse human rights judgments. We recommended that the Ministry of Justice create a database on the implementation of outstanding ECHR judgments against the UK that is similar to its database on domestic declarations of incompatibility. We recommended that information notes provided to the Committee of Ministers should routinely be copied to us. The Government, we believe, should adopt a much clearer policy on systematically responding to declarations of incompatibility made by our domestic courts, including adopting a timetable for responding to those judgments.



They should make greater use of remedial orders and ensure that any proposed legislative solution makes the necessary provision for a remedy for those applicants already adversely affected by the incompatible provisions. We urged the ministry to produce clear guidance on

declarations of incompatibility and remedial orders, and to monitor the impact of incompatible statutory provisions. We recommended that the ministry should provide the committee with copies of Strasbourg court judgments against the UK within a month and a declaration of incompatibility within 14 days, and inform us of the results of any appeal or hearing by the Grand Chamber. Once a judgment has become final, we asked the ministry to write to us explaining any measures that the Government consider necessary to comply with the judgment, and whether the Government intend to use the remedial process. And we made other recommendations about timetabling.

In August 2007, the Minister for Human Rights, Michael Wills MP, provided the committee with the Government's response to our recommendations on the issues considered in our previous monitoring report. We have published that response with this report and consider it in chapters 4 and 5. In the letter, the Minister explained that the Government would respond separately to our broader recommendations about the way in which the Government implement judgments once he had considered the matter further.

We point out in paragraph 8 that, over 12 months since the publication of our last report, we have received no further substantive response to our systemic recommendations. We criticise this delay, which then stood at five months, in our annual report. We understand that an informed response requires co-ordination across government and input from several departments, but a delay of more than one year in replying to these recommendations is unacceptable. We have requested the Government to provide us with a substantive response as soon as possible and certainly before the end of the current parliamentary Session. We hope that the Minister will provide that response today.

We welcome the co-operation of government officials, but we are disappointed by the Government's further failure to respond to our request for a memorandum on their progress over the past 12 months in dealing with adverse judgments. In paragraph 14, we call on the Minister with responsibility for human rights and the Foreign and Commonwealth Secretary to provide us with that report, following the model adopted in the Netherlands. Again, we hope that the Minister will be positive in his reply today.

We are encouraged—see paragraph 26—that the statistics prepared by the Committee of Ministers show that the UK takes a relatively positive approach to its convention obligation to implement the Strasbourg court's judgments. However, we note in paragraph 28 that delays of five years in resolving the most significant breaches of the convention are unacceptable unless extremely convincing justification for the delay can be provided. We call on the Government to publish their response to the annual report of the Committee of Ministers, and ask them to explain the reasons for any delay in relation to the introduction of general measures



in each of the cases that have been the subject of supervision by the Committee of Ministers for longer than five years. Once more, we hope that the Minister will respond positively today.

The report highlights other issues of particular concern. I shall briefly refer to some of them and no doubt other noble Lords will wish to say more. First, prisoners' voting rights are dealt with in paragraphs 47 to 63. In October 2005, in the case of Hirst v UK, the Grand Chamber of the European Court of Human Rights held that the blanket ban on voting by prisoners in the UK is incompatible with the right to participate in free and fair elections as guaranteed by

Article 3 of Protocol 1 to the convention. Apart from a consultation in 2006-07, the responses to which the Government have refused to publish, the Government have failed to take steps to comply with this judgment. In contrast, Ireland and Cyprus, who were not party to the case, have implemented the judgment.

In this country, we have a large prison population living in hugely overcrowded conditions. As the court said in the Hirst judgment, prisoners generally continue to enjoy all the fundamental rights and freedoms guaranteed under the convention, except for the right to liberty—see paragraph 57 of our report. Individuals' fundamental human rights, including the right to vote, are not contingent on their continuing to be good citizens. The Hirst judgment does not require that all prisoners be allowed to vote, but does say that a blanket ban is not proportionate. The Government have now had over three years to consider where the balance lies. This failure to respond is deplorable. The judgment must be implemented before the next election. Is that the Government's intention; if not, why not?

We deal with other delays in implementation in paragraphs 64 to 80. In the series of cases involving the use of force by security services in Northern Ireland, the Government have yet to comply with their obligation to provide an investigation into these deaths that complies with the requirements of Article 2. Will the Minister provide an indication of the timetable for compliance with the court's judgments in these cases?

There is also the issue of declarations of incompatibility as an effective remedy. Both this and the previous report by our committee discussed the view of the Strasbourg court that the inconsistency of the Government in responding to declarations of incompatibility means that they are not an effective remedy for the purposes of the convention—see paragraph 83. The Government's failure to ensure that there is a consistent and speedy legislative response to declarations of incompatibility risks undermining the object and purpose of the Human Rights Act; namely, to provide an effective remedy at the domestic level.

A clear example of this problem arises—see paragraph 96—in relation to the declarations of incompatibility made in respect of the Government's certificate of approval scheme for marriages involving a person subject to immigration control. The provisions are incompatible with the right to marry without discrimination, in so far as they provide an exemption for marriages that take place within the Church of England. The Government accept that the discriminatory



exemption must be removed and say that they will remedy the incompatibility as soon as practicable. Can the Minister say when that is likely to happen?

Fifteen years ago—on 23 November 1993—I suggested in my maiden speech that a human rights scrutiny committee might be established in this House. The Joint Committee on Human Rights was set up eight years later in January 2001 as a committee of both Houses, and is all the better for that. It has grown from strength to strength as a public watchdog, and through its legal advisers has become the legal adviser to Parliament in this area. Quoting the words of a poet, and in regard to the painting of Moses and the 10 commandments in this Room, the convention is,

> “a moon for mutable lampless men”,

and women. The Government's response to the report will be a real measure of the extent of their commitment to democracy, human rights and the rule of law. I look forward to the contributions to this debate. I beg to move.

Moved, That this House takes note of the Report of the Joint Committee on Human Rights, *Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008* (31st Report, HL Paper 173).—(*Lord Lester of Herne Hill*.)

**3.45 pm**

**Lord Dubs:** I congratulate the noble Lord, Lord Lester, on having secured this debate on what is by any standards a very important issue, and one which I fear has been much neglected in political and parliamentary discussions; namely, are we as a country and a Government sufficiently energetic to comply with the judgments of the European Court of Human Rights? I can do no better than quote from paragraph 13 of the report's recommendations, which seems to sum up many of our criticisms. It states:

> "In our previous reports, we have drawn attention to a number of cases where significant delay in implementation has tarnished the otherwise good record of the United Kingdom in responding to the judgments of the European Court of Human Rights".

There you have it in a nutshell—we have a good record and yet we are very slow in responding. Throughout the report, and that of the previous year, the question of delay, slow response or no response at all over a period, seems to sum up our main criticism.

I appreciate the difficulties and that some of these issues are complicated and cut across several government departments, and therefore that the Government have to provide a co-ordinated approach. Of course, that is not as easy as a single department providing a response. However, I should have thought that we could have had a bit more action, and a faster reaction, than we have had up to now.

The Joint Committee on Human Rights seems to me the only area in the whole British Parliament where there is proper scrutiny of the European Court of Human Rights. There may be other scrutiny in the Council of Europe and elsewhere, but in terms of the British Parliament this is the only committee that can provide such scrutiny. Therefore, I am delighted that we have now published two successive reports that indicate our concerns about the process.

**24 Nov 2008 : Column GC128**

This morning I had a chat with one of the Law Lords. I mentioned this debate and said it was a pity that the Law Lords were not contributing to it. He told me that it was not appropriate for Law Lords to take part in these debates—or words to that effect—much as he wished that he could. I was not aware of that, and it is a pity. If ever there was a debate to which the Law Lords could contribute very handsomely, it is this one, given that they would speak from enormous experience. Something in our procedures and conventions seems to hold them back from doing so, which I regret.

Prisoners' voting rights are dear to my heart. When I was in the House of Commons I introduced, under the 10-minute-rule Bill procedure, a Bill to give rights to prisoners, which included the right to vote. That initiative made no progress, but I am delighted that it is now higher up the agenda. I only regret that the Government have not yet seen fit to do anything about it. My next point concerns not the report but the rights of Members of this House to vote. We do not have the right to vote. I have always felt indignant that, for reasons which have always escaped me, we do not have a right to vote to influence the Government. I regard that as a breach of democracy, but, I hasten to add, not as important an issue as giving prisoners the right to vote. As it says in our report, under European human rights arrangements people do not have to have an impeccable record as individuals in order to be entitled to the right to vote. In other words, being a prisoner is not in itself, and should not be, a way of debarring someone from taking part in our electoral proceedings.

I turn now to some of the Irish cases, particularly the Finucane case, which I know is difficult. My understanding—I think that the noble Lord, Lord Lester, also referred to it—is that we are talking about the possibility of collusion. The issue has been whether the Finucane case, and one or two others, should be heard under the Inquiries Act 2005. Last year's report states that,

> "the Inquiries Act 2005 is incapable of providing Article 2 compliant investigations into deaths in which collusion was a factor".

Collusion by implication must have been a factor. I know that the Finucane family have been very concerned that the inquiry into Pat Finucane's murder should be held under earlier legislation, which the Government have resisted. The family want that because the Executive would not so easily be in a position to prevent certain evidence being put forward—I think that that refers mainly to the security services. Carrying out the inquiry under the 2005 legislation might negate the purpose of having such an inquiry. It is a matter of regret that that is not the case.

There are some clear conclusions and recommendations in the report. The committee has looked into the work of the European Court of Human Rights and at the conclusions. We have seen instances where the British Government have not been in compliance. I urge the Government to look at the report in some detail to see what they can do to speed up dealing with some of these very difficult but important cases, which represent the attempt by the European Court to say something positive about the rights of individuals in this country.

**24 Nov 2008 : Column GC129**

**3.52 pm**

**Lord Bowness:** I, too, congratulate the noble Lord, Lord Lester, on securing this debate. I shall speak briefly as a member of the Joint Committee on Human Rights to support what the noble Lord has said today and to emphasise that members of the committee of all parties and of no party believe that the issues which he has raised are of concern and should be addressed by the Government as soon as possible.

There are concerns not just about the issues but also about the delay on the part of the Government in responding to clear recommendations which have now been set out in two reports of the Joint Committee, one of which was published more than a year ago. We have asked again that after that year, and after the publication of yet another report, the report to

answer these detailed recommendations should be published by the end of this parliamentary Session. Clearly, time is running out for the Minister to meet that request. I do not think that this short debate is the place to repeat all the questions and the recommendations in the two reports. The noble Lord, Lord Lester, has given a masterly synopsis of all the recommendations and the points of concern.

Last year's report made suggestions very clearly set out in paragraph 6 of this year's report on how the UK's domestic mechanisms for the implementation of judgments could be improved. It has already been pointed out that in 2007 the Minister then responsible said that the Government would respond after further consideration. To date, no substantive response has been received. It would be very helpful if, referring back to paragraph 6, the Minister could advise us on what progress has been made under every heading.

Like the noble Lord, Lord Dubs, I, too, shall refer to the case of Hirst v UK in which the European Court of Human Rights found that a blanket ban on all prisoners having rights is incompatible with the right to participate in free and fair elections. In August 2007, the Government advised that they were considering responses to the first stage of consultation before deciding how to take the matter forward.

One of our recommendations in this and in last year's report was that the Joint Committee on Human Rights should be kept advised about what is going on. The Minister will perhaps understand that, when the committee's officers read on the Council of Europe website that the Government had submitted a revised action plan to the Council of Ministers which indicated that the Government were undecided about whether a further consultative exercise or a legislative solution were necessary, we were somewhat surprised that we had not been advised in correspondence by Ministers, especially since the matter was an ongoing topic. That prompted a further letter to the Minister and our requests on that particular issue are set out in full on page 25 of the current report. Therefore, will the Minister please address the questions raised? What is the current position on that issue? I emphasise that the Joint Committee on Human Rights is not promoting a particular solution. It only wants to know from the Government how they propose to address the issue in the light of the judgment.

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There are other important issues, including investigations into cases involving the use of lethal force by security forces in Northern Ireland, security of tenure for Gypsies and Travellers and other matters. Those are the merely illustrative of the cases and reasons for concern of the Joint Committee on Human Rights. The delays in responding to the committee and bringing forward proposals to remedy the situation mean that the UK has been found in breach of convention rights, and the lack of information given to the committee about progress and the steps that the Government are taking cause concern. That is why I hope that this debate will give the Minister the opportunity to give the Grand Committee assurances and answers to points raised in the report.

I do not believe in drawing invidious comparisons with our partners either in the European Union or the Council of Europe. However, given that we drafted the European Convention on Human Rights and were one of the first signatories, it is unusual that together with Italy and Turkey we have the largest number of outstanding cases where there is a delay of more than five years.

**3.57 pm**

**Lord Parekh:** I, too, begin by congratulating the noble Lord, Lord Lester, on securing this debate and thank him for introducing it with characteristic eloquence. I also want to use the occasion to pay a personal tribute to him. On both the Joint Committee on Human Rights and outside he has played a sterling role in making sure that human rights remain central to the national attention.

This is a fine and balanced report and it is a great tribute to the Labour Government that they introduced the Act and have done quite a lot in order to embed it in our legal system. While congratulating and thanking the Labour Government for doing all that, I hope to be forgiven for expressing some disappointment with a couple of things. First, I was disappointed to hear that the Government have been slow to respond to some of the important systemic recommendations of the Joint Committee. In some cases, I am told that the delay has been as long as one year. That is unfortunate.

My second area of concern is that there has been a delay of as long as five years in resolving some of the most important and significant breaches of the European convention. It is sad that the UK is rated among the top 10 states in that regard and only Turkey and Italy have a worse record. The Joint Committee rightly recommends that the Government publish their response to the annual report of the Committee of Ministers and explain why the delay is occurring and how it will be shortened. In this context, as the report rightly says, the Ministry of Justice should take a co-ordinating role. This complies with the Committee of Ministers' recommendation that there should be an effective, domestic mechanism for implementing European court judgments.

Two substantive issues interest me, partly because I was on the Joint Committee for the first two years of its existence and partly because I happen to teach subjects that are related to these two areas. The first has to do with the prisoner's right to vote. The question



whether prisoners have a right to vote is not easy, and, ever since the debate began on who should have a right to vote, there has always been a dispute about whether this is a human right or whether it is subject to good behaviour. By and large, the debate was resolved, so far as I can see, in the following way. It is a human right in that the prisoner has a right to vote, even if he is in prison, unless he is imprisoned either for showing explicit hostility to the state—in other words, if he is guilty of treason—or for having been involved in armed rebellion. Short of this, an individual's good conduct as a citizen has no bearing on his right to vote. In going against this view and denying prisoners the right to vote, we are out of step with many European countries and countries outside Europe. As the noble Lord, Lord Lester, rightly pointed out in response to the European court's judgment, Ireland and Cyprus passed legislation in 1986 in giving prisoners the right to vote. There is an interesting paradox here; if prisoners do not have a right to vote, it is difficult to explain why they should regain the right to vote when they are released from prison.

The second issue relates to artificial insemination and serving prisoners, as raised by Dickson v the United Kingdom. I know that the Government are preparing to move in the direction of the judgment of the European court, but they insist on five considerations being met before prisoners can have a right to artificial insemination. These five considerations virtually emasculate the right to artificial insemination. Denying the prisoner the right to artificial

insemination punishes not only him or her but the spouse, which cannot be justified in law or in ethics. Some of these considerations, which the Government intend to impose or invoke, do not apply to ordinary citizens and artificial insemination and therefore seem to subject prisoners to an extra set of constraints for which there is no justification.

I end with one general point, which may not directly relate to what the report says and largely concerns the function that the Joint Committee on Human Rights can perform in the public life of this country. Rightly or wrongly, the Human Rights Act, and particularly the judgments that other courts have delivered, have been subjected to all kinds of criticism, leading in some cases to pressure to abolish the Human Rights Act. We know that many of these criticisms are unfortunate, wrong or muddled, but they need to be identified and refuted. Moreover, like all new traditions—we are moving from a culture of liberty to a culture of human rights in our country—the problem is simply that as human rights become embedded, courts deliver judgments, some of which are acceptable and some of which leave something to be desired. There are also larger questions about what to do when human rights conflict with other worthwhile national goals.

There is something to be learnt from criticism. Although muddled criticism should be refuted, intelligent criticism has some important lessons for us. I should have thought, therefore, that the Joint Committee on Human Rights could periodically produce reports not only to identify what the Government have or have not done but to identify and deal with the criticisms that are made of the Human Rights Act, analysing the court's judgments and determining whether there are



any lessons that we can learn. If they were to do this, these reports would make a substantial contribution to the public life of this country and would help to build up an appropriate legal tradition of interpretation. Such an intervention in public life by the Joint Committee at this early stage when human rights are being embedded would be most salutary.

**4.05 pm**

**Lord Goodhart:** I welcome very warmly the action of my noble friend Lord Lester of Herne Hill in bringing this report before the Grand Committee. Many lawyers like myself and indeed those working beyond the legal world believe that my noble friend is the leading expert on human rights in this country, and has been so for many years. I should say that in so far as the Moses Room has such a thing as a Front Bench, owing to the unavailability of my noble friends who are appropriate speakers in such debates, I have lent myself to do so, but it is merely a temporary aberration.

The Government are required by the European Convention on Human Rights to comply with the decisions of the European Court of Human Rights. This country played a central part in drafting the convention in 1950 and 1951, and we rightly pride ourselves on our legal system and observance of the rule of law. I believe it follows that we must set an example to other member states of the Council of Europe, some of which have lower standards of observance of the rule of law and obedience to the decisions of the courts than we do. We must help to bring those states up to our standards, not lower our standards to theirs. That is why compliance with the decisions of the European Court of Human Rights, and indeed with the final decisions of domestic courts if the case does not go to Strasbourg, is absolutely necessary.

Under the Human Rights Act, the judiciary has power to declare primary legislation incompatible with the Act, but that does not invalidate that legislation. The duty of compliance therefore falls on the Government. This report plays an important part in ensuring that the Government do in fact comply with their duties. This year the report contains some good news and perhaps rather more in the way of bad news. One item I would include in the good news for the past year is that no final decisions declaring that any UK legislation is incompatible with the convention have been reached in the courts. That probably shows that over recent years, those responsible for the drafting of primary legislation have a better understanding of convention rights and that the main conflicts created by older legislation have worked themselves through the process.

The bad news, as has already been pointed out, is the delay on the part of the Government in dealing with the decisions of the European Court of Human Rights made in earlier years. A particularly bad example of that arises from the decision in the Hirst case about the rights of prisoners to vote at elections and, like all other noble Lords who have spoken in the debate, I want to raise this point. The Hirst case was decided more than three years ago. Since then, the Government have taken no effective action to implement it. Although



the report does not say it in so many words, the inference I draw from reading it is that the Government may well be correct in their belief that the necessary legislation would be unpopular and want to avoid taking any action before the next general election. The opposition to giving at least some prisoners the right to vote, however, ignores the principle expressed by the great prison reformer, Sir Alec Paterson, which is that criminals should be sent to prison as a punishment and not for punishment: the punishment is the loss of liberty, and thus prisoners should be treated humanely and not be deprived of any rights unless those rights are incompatible with their imprisonment. There is nothing inherently incompatible with imprisonment in allowing prisoners to have a postal ballot. Hirst recognises that prisoners can be denied the vote where the crime for which they have been sentenced is one that seeks to undermine democracy, the rule of law or human rights. I would go a little further than the noble Lord, Lord Parekh, in indicating some of the crimes that might justify deprivation of the right to vote. They include terrorism, involvement in organised crime, racist violence, electoral fraud and corruption involving holders of public office. However, the difficulty in deciding what crimes should remove the right to vote is no justification for the length of the delay in the Hirst case or the other cases referred to in this report.

Before I sit down, I shall add a short coda on an entirely different subject. I was delighted to find in paragraph 121 that the Carson case is to go to Strasbourg. That problem has concerned me ever since I was my party’s spokesman in the House of Lords on pensions. Mrs Carson is one of approximately 500,000 people entitled to a United Kingdom state pension because of the contributions they made when resident and working in this country who are now resident abroad. People in this category do not receive the annual inflation pension increase given to all pensioners resident in the United Kingdom, the European Union and some other countries. This means that the pensions of Mrs Carson and the hundreds of thousands of other people in that position diminish in real terms every year. That is weird, unjustifiable and unfair discrimination, which was introduced by the Wilson Government in the 1960s. It has never been revoked, no doubt because most of the pensioners affected by this rule have no vote. Mrs Carson failed in the courts of this country, including in the Appellate Committee of the House of Lords, but I hope that the European Court of Human Rights will give a good bashing to whichever Government are in power when the case comes before it. I hope that whichever

Government are in power will move as quickly as possible to apply the inflation update to all pensioners.

That is enough from me this afternoon.

**4.13 pm**

**Viscount Bridgeman:**I, too, thank the noble Lord, Lord Lester, for obtaining this debate. In doing so, he has enabled your Lordships' House rightly to participate in holding the Government to account, which is one of the principal aims of Parliament. I am sure that the Minister will welcome the opportunity to respond fully to the points made today.

**24 Nov 2008 : Column GC134**

The view from these Benches is that the Human Rights Act, which gives such prominence in our legal and parliamentary system to the European—

**Lord Colwyn:** I am sure that the noble Viscount is not about to finish his speech. There is a Division in the House. The committee will adjourn for 10 minutes.

[*The Sitting was suspended for a Division in the House from 4.13to 4.23 pm.*]

**Viscount Bridgeman:** As I was about to say, we on these Benches believe that the Human Rights Act, which gives such prominence to our legal and parliamentary system in the European Convention on Human Rights, is a noble and long-established doctrine but that it has shifted the balance of our constitution too far. My party has said this before, and I say it again simply so that noble Lords know where we stand. However, the point that we are debating today and to which I urge the Government to respond is quite separate. I have indicated that we on these Benches may take a different view on whether our approach to the application of the Human Rights Act is the right one, but we are where we are and the Government introduced their human rights legislation, so that is the system under which the courts make their rulings. It is also the system that Parliament must scrutinise.

Parliament, through the tireless work of many, including noble Lords present, does indeed play its part. What I find deplorable is the Government’s response, which has been quite dismal. It is one thing to disagree with the Government’s response to an issue; it is quite another for the Government simply to fail to respond at all—a point which the noble Lord, Lord Lester, and my noble friend Lord Bowness made strongly.

Last year, the JCHR recommended that the Government make a series of systemic reforms that would facilitate enhanced and more efficient implementation of human rights judgments. It is extremely disappointing that, almost 18 months later, the Government have yet to respond substantively to that report. Although some delay in assessing the feasibility of the committee’s proposals is understandable, surely 18 months is ample time to formulate a response. The delay is especially surprising given that there are obviously some serious procedural and systemic problems with the Government’s current approach, exemplified by the fact that only Italy and Turkey have a higher number of leading cases outstanding for longer than five years—a point which several noble Lords have made. I join other noble Lords in calling on the Minister to respond to last year’s report as soon as possible and to explain the reason for the delay.

I understand that, earlier this year, the committee wrote to Ministers in the Ministry of Justice and in the Foreign Office to request a report detailing cases in which adverse judgments have been made against the UK and examining their implications for domestic law. This would be a valuable innovation not only because it would make for a more transparent process but because it may also encourage the Government to be more proactive in monitoring and implementing

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Strasbourg case law—a point which the noble Lord, Lord Lester, made in his admirable summary of paragraph 5 at the beginning of this debate.

It would be particularly interesting to know what steps, if any, the Government have taken to meet the recommendation of the Committee of Ministers on efficient domestic capacity for rapid execution on judgments of the ECHR. Perhaps such a report could also include judgments made against other state parties that may have implications for our own domestic law. Again, in this context, it is disappointing that the Government have not even responded to the committee's request, let alone provided the information that was requested.

The JCHR is clearly concerned that, in a number of areas, the Government either have not responded to judgments adequately and thus run the risk of further adverse judgment or are simply dragging their feet on implementation. Two cases have already been covered in this debate in some detail. First, the Government have said that no legislative response is necessary to the case of Dickson v the United Kingdom. The committee appears to doubt this, arguing that the Government's public-interest approach leaves the door open to further findings of incompatibility. It would be interesting to hear the Government's view on this. Once again, I hope that the committee will get a timely response to its questions. Secondly, there is the issue of prisoner-voting, which has been well covered in this debate and is yet another instance of government inaction and delay.

In March this year, the JCHR asked whether the Government intended to produce a further second-stage consultation and asked for an explanation of the Government's view that the incompatibility identified by the Grand Chamber in Hirst v the United Kingdom could be removed without legislative reform. It also asked for an up-to-date timetable for draft legislation and whether the Government intended these reforms to be in place in time for the next general election. I am always ready to receive intermediate briefings in the course of this debate, and the noble Lord, Lord Lester, has reminded me that the Irish Government ratified this if not overnight then the next best thing. My noble friend Lord Bowness has made a plea for the committee to be kept informed, and I congratulate the noble Lord, Lord Parekh, on giving such a valuable background to this subject.

I am concerned that the Government have not responded to these questions and appear to be attempting to kick the issue into the long grass. I urge them to rethink their approach and to provide a proper timetable for their response. I hope that the Minister will be in a position today to set out the Government's approach on this matter clearly and without the delay and indecision that seem from this report to be all too common.

**4.30 pm**

**The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach):** I thank all noble Lords who have taken part this afternoon, particularly the noble Lord, Lord Lester, for

moving the debate. He has a deserved reputation in this field, not just from his

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advocacy in many of the leading cases themselves, but from his own work on the implementation of judgments at the Committee of Ministers of the Council of Europe. He has a life-long history of being involved in human rights cases and legislation and in trying to bring human rights legislation to the fore.

My opening comment will undoubtedly be preaching to the converted, but I want to emphasise none the less how strongly the Government feel that human rights standards are respected. I am proud to be a member of the Government who introduced the Human Rights Act, which received Royal Assent just over 10 years ago, almost to the day. We did not just talk about it; we brought the Act into force. With that Act, we "brought rights home"—the rights under the European Convention on Human Rights to which the United Kingdom is party along with all the other members of the Council of Europe. This is not a party political debate, but it is important and fair that I ask the noble Viscount, Lord Bridgeman, who spoke for the Official Opposition today, to ponder this question, although I do not expecting to get to his feet to answer it. If and when they come to power, is it the policy of the Conservative Party—the Official Opposition—to abolish the Human Rights Act? That question will have to be answered in due course and is as basic as any question that we are dealing with in this debate.

I now turn to the debate and to the report. By way of context, we have in this debate focused on a limited number of cases—those that have raised particularly difficult issues of principle or otherwise. Thanks to the Human Rights Act, convention rights are routinely considered by courts and tribunals throughout the United Kingdom every day. Their judgments have two important features to which I want to draw attention. First, they are made by judges familiar with our legal system, and the way that our public services are delivered. Secondly, they apply directly to the parties before the court without people having to wait to go to Strasbourg.

Nevertheless, some of the most difficult questions are still considered by the European Court of Human Rights in Strasbourg. When it decides against the United Kingdom, we have an obligation to implement its judgment—an obligation that we take seriously. As a Government, we are of course answerable primarily to the Committee of Ministers of the Council of Europe for our implementation of Strasbourg judgments. Therefore, while we are of course grateful to the Joint Committee for this report and its excellent work and recommendations, which we are considering, I know that it will acknowledge that the final say on these matters lies elsewhere.

The mechanism of declarations of incompatibility in the Human Rights Act was another part of "bringing rights home". That mechanism strikes an important balance: it allows higher courts to identify primary legislation that they consider incompatible, but does not allow them to strike it down. We argue that that compromise respects the supremacy of Parliament, and has worked very well over the eight years that the Act has been in force.

It is of course true that there is no legal obligation on the Government or Parliament to take remedial action in response to a declaration of incompatibility.

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However, the Government have always committed to present remedial measures to Parliament following a declaration of incompatibility. We were particularly pleased that in April this year, the Grand Chamber of the Strasbourg Court opened the door to a possible future finding that declarations of incompatibility might constitute an effective remedy; that is, a remedy that has to be sought before a case is taken to Strasbourg. We know that we have a way to go to demonstrate the consistent practice that the court demands, but this is already a significant step forward in the court's jurisprudence.

I turn now to the specific cases and issues raised by noble Lords in their powerful contributions. On artificial insemination, we have to say bluntly that the Joint Committee's views on the case of Dickson are very disappointing. We have remedied the violation in Dickson by amending the policy, under which the Secretary of State will continue to make decisions based on the individual merits of each case. The judgment does not require primary legislation to be changed. We simply disagree with the Joint Committee on that point. The judgment was about the way in which requests for artificial insemination are considered and we believe the steps that we have taken have fully addressed these points.

What steps have we taken to implement this judgment? The fact that the policy has been amended, and that the Secretary of State is taking a flexible approach in applying it, means that legislation is not required. We have removed the presumption against granting requests, taking account of the partner circumstances. We no longer say that permission will be granted only in exceptional circumstances. There is a non-exhaustive list of policy considerations, including the impact on the prisoner's partner. Applicants are asked to provide information on these or anything else that supports their case. No one factor takes precedence over the others and each case is decided on its merits, against those equally weighted considerations. On the basis of what I have said, we hope that the Committee of Ministers will soon agree to close the case.

The case about which most noble Lords have spoken is prisoners' voting rights. I hope that it will be generally accepted that this is a sensitive and complex issue, as has been demonstrated when the issue has been considered before in your Lordships' House. The Hirst judgment requires the Government to reconsider their policy of a blanket ban on the voting rights of convicted prisoners. There have been those elsewhere who have used this judgment as an opportunity to criticise the Human Rights Act. I do not need to tell your Lordships that this was a judgment of European Court of Human Rights under the convention itself, and we would be obliged to implement this judgment whether there was a human rights Act in force in the United Kingdom or not. Repealing the Human Rights Act would make no difference to this judgment or to any other judgment of the Strasbourg court.

As your Lordships know, we have conducted the first stage of consultation on implementing this judgment. We remain committed to carrying out a second consultation, examining in more detail how voting rights might be granted to serving prisoners and how



far those rights should extend. We need to take account of the wide spectrum of opinion in the country, as well as the practical implications for the courts, the prison authorities and the conduct of elections. The solution that we reach must respect the court's judgment and the traditions and context of the United Kingdom. We will continue to keep the Committee of Ministers updated on our progress on this case, as we have done so far. We remain committed

to carrying out a second, more detailed public consultation on how voting rights might be granted to serving prisoners and how far those rights should go. As far as the results of the first stage are concerned, we concluded the first stage in March last year, and we intend to publish the results at the same time as we launch the second stage of consultation.

Most noble Lords want to know when the judgment is likely to be implemented in the United Kingdom. I cannot give a date. I repeat our view that this is a very sensitive and complex issue, and we will be looking carefully at what the right approach will be and how it will be implemented.

**Lord Lester of Herne Hill:** Can the Minister tell us when the second stage consultation will begin and end?

**Lord Bach:** I cannot give an answer on when it will begin; I am not in a position to do so.

On getting the revised action plan on prisoners' voting rights to the JCHR, which the noble Lord, Lord Bowness, mentioned, we are sorry that did not happen. It is our clear intention to keep the committee updated with action plans. Frankly, this was an oversight, and I am told that officials have been reminded of the need to copy action plans to the committee. I apologise for that.

The Northern Ireland cases have been spoken to by a number of noble Lords. They presented particular challenges during their implementation. We have put together a very detailed package of measures to implement the judgments, and many steps have already been taken. The Committee of Ministers of the Council of Europe has made clear in its public assessments that the United Kingdom has now met many of the requirements of the judgments, but nevertheless we need to work to resolve the outstanding measures. In particular, we are awaiting the outcome of either inquest proceedings or review by the Historical Enquiries Team in respect of four of the cases. We have put together a detailed package of measures to implement the judgments, and the Committee of Ministers has made clear in its assessments that many of the requirements of the judgments have been met. Four of the six cases are subject to ongoing inquest proceedings and investigation by the Historical Enquiries Team, and those proceedings must run their course. We will continue to work with the Committee of Ministers to resolve the remaining measures.

My noble friend Lord Dubs mentioned the Finucane case and suggested that the Finucane family should be allowed an inquiry that is not an inquiry under the Inquiries Act. The Government do not consider an inquiry under the Inquiries Act to form part of the



measures required to implement the judgment. We consider that the very extensive investigation by the noble Lord, Lord Stevens, together with subsequent decisions on prosecutions, meet the requirement of the judgment. The commitment to an inquiry was a separate commitment made many years ago as part of the political process. Let me reassure my noble friend that the Inquiries Act does not enable the Executive to withhold any information from an inquiry. It is the only statutory framework that now exists for statutory inquiries of this nature. Discussions are ongoing between the Government and the Finucane family.

On the Baiai v Home Secretary sham marriages case, the noble Lord, Lord Lester, asked when the Government will implement that judgment. We are committed to remedying the declared incompatibility with Article 14. We were awaiting the outcome of the House of Lords appeal. As the noble Lord will know, that judgment was handed down just as we went into Recess on 30 July. As we speak, the UK Border Agency is liaising with relevant stakeholders, and we are still considering the most appropriate way to remedy the incompatibility.

Criticism is made in the report and has been echoed in the debate about the fact that the committee has not had a response to all of its inquiries made of the Government and to every recommendation made in its last report on the subject. I stress that my right honourable friend the Minister for Human Rights did respond to all the points raised by the Joint Committee in relation to specific cases in its previous report. We continue to consider the points made by the Joint Committee about the general system for the implementation of judgments, which it repeats in the report that we are debating today.

Improvements can always be made to any system, but the committee has acknowledged that we currently respond very well in general to judgments finding breaches of human rights. Any changes to the system for overseeing implementation will therefore not be seismic, but we will conclude our consideration in time for our response to this report. Our response, I believe, is due within two months. When we respond to the second report, we will wrap up any outstanding matters relating to specific cases. The Government understand why the Joint Committee feels frustrated that we have not been able to address all their detailed questions about particular cases. However, the evidence appended to the report shows that the Government have certainly been forthcoming with information in the past year, and I know that many other questions have been answered in correspondence between government officials and the Joint Committee's advisers. As I say, we intend to respond within the usual two months to the current report.

The noble Lord, Lord Bowness, talked about the UK's record on implementation. We are pleased that our record on implementation is recognised as being good. Although the Joint Committee's report majors on a small number of outstanding cases, as one can understand it will, many UK cases have been discharged from scrutiny in the past two years. This shows that measures have been taken which the Committee of Ministers considers effective to remedy the breaches. The noble Lord also asked why the United Kingdom



has the highest proportion of leading cases that have been waiting for more than five years for a remedy. At the end of 2007, the UK had 15 leading cases outstanding, of which eight have been subject to the supervision of the Committee of Ministers for more than five years. Of those eight cases, however, six are Northern Ireland cases on the use of lethal force that have given rise to specific implementation issues. That figure has heavily skewed the statistics, which do not otherwise indicate for us a systemic problem.

I was asked whether we should publish an annual report by the Government on the European Court of Human rights. We believe that such an annual report would duplicate information that is available elsewhere, which frankly would not be a good use of resources. In particular, we know that the Joint Committee already receives regular updates about judgments against the United Kingdom. The example of the Netherlands Government is cited as an argument for an annual report to Parliament. The information that would be included in such a report is

already widely available, and there would be no additional benefit in producing yet another report on the subject.

The noble Lord, Lord Lester, and my noble friend Lord Parekh asked about the Ministry of Justice adopting a stronger co-ordinating role. In the past few years, the Ministry of Justice and its predecessor, the Department for Constitutional Affairs, has taken more of a central role in implementing judgments. However, the lead responsibility for implementing a judgment properly lies with the department in charge of the policy area in question. They also asked why there is no central database of judgments against the United Kingdom. All judgments against the United Kingdom can be accessed through the website of the European Court of Human Rights. At this time, we have found there to be no significant value in producing a separate database of cases and their implementation, which would be a resource-intense task. We have also been asked to commit ourselves to specific time limits for implementing cases, but the length of time that each judgment takes to implement depends first on what needs to be done and, secondly, on whether it requires primary legislation. To set a blanket time limit for all cases, therefore, would not be appropriate. It is the responsibility of the Committee of Ministers of the Council of Europe to ensure that implementation is carried out in a timely manner.

We are not, of course, required to respond to the Committee of Ministers' annual report on implementation of judgments. It is published by the committee for information. As for the Carson case, which the noble Lord, Lord Goodhart, mentioned, apparently there was a judgment only two weeks ago. I am sorry in the circumstances to have to tell the noble Lord that it went against the side that he was clearly supporting.

**Lord Goodhart:** That proves the obvious: that the European convention cannot right all wrongs. The matter remains grossly unfair and I hope that some day a Government of this country will take the courage to do something about it.

**Lord Bach:** I now close my speech with some points on which I hope we can agree. We agree in principle about the value of our Human Rights Act, but I have



some more specific points. In his opening remarks, the noble Lord, Lord Lester, talked about the court being overwhelmed with cases. We share the noble Lord's concern about the need to reform the Strasbourg court. We continue to engage with our colleagues in the Council of Europe to press for Protocol 14 to be fully ratified. We are also exploring what other measures can be taken to keep the court functioning with or without that protocol.

We also agree with the suggestion of the noble Lord, Lord Lester, that the Government should make greater use of remedial orders. They are an excellent tool for addressing the incompatibility of primary legislation and it is disappointing that they have been used only three times since the Act came into force. One problem is that remedial orders cannot be amended in Parliament, so they are not entirely suited to complex remedial measures, which may explain their limited use on recent cases. However, we are pressing—my department particularly is pressing—for them to be used more when appropriate.

My noble friend Lord Parekh said that the JCHR should bust myths concerning human rights. As a Government, we do our best already and work hard to correct myths and

misunderstandings about human rights. It is not always the easiest thing to do, particularly as some of the media concentrate on the Human Rights Act and concerns around it.

Many myths have grown up about the Human Rights Act—that it somehow favours criminals, gives criminals the right to privacy, to obtain pornography and to give rights to rooftop protesters. Frankly, a lot of those myths are just not true. Nothing in the Human Rights Act could enable any of those things to happen or prevent the prosecution of those who are a danger to the public. On the contrary, the Act explicitly allows limitations on rights in the interests of public safety or for the prevention of crime. We believe—and I hope that the Committee does too—that the Act secures a fair balance between the interests of society and the protection of the rights of the individual. It is a protection to all of us, and particularly important to the most vulnerable in our society—those in the healthcare system and adults who have learning disabilities.

I have done my best to answer some of the questions that have been raised in this important debate. We are proud that, overall, our record on the implementation of judgments is recognised as good both by the Committee of Ministers and by the Joint Committee. We will of course respond to the committee in the usual way. More importantly, we will continue to work to implement judgments and to respond to declarations of incompatibility. I hope that the Joint Committee's next annual report can reflect even more positive progress in that area.

I shall finish by mentioning two matters. First, no mention has been made so far of the Aslef case and the way in which Her Majesty's Government have dealt with what was an undoubtedly tricky issue in regard to the best possible way of doing so. I should like to put on the record the fact that the report commends the Government on the attitude they took. Secondly, the real measure of this Government's support



for human rights and the convention is to be found, as I said at the beginning of my remarks, in our passing of the Human Rights Act and setting up the valuable Joint Committee on Human Rights, whose report we have debated today. I end by thanking once again all noble Lords who have contributed to the debate.

**4.55 pm**

**Lord Lester of Herne Hill:** I thank everyone who has taken part in this important debate, including of course the Minister for his full but in some respects somewhat bleak reply. I am sure that these proceedings will be read not only in this country, but beyond it. In fact, the Committee of Ministers is to meet in Strasbourg from Tuesday to Thursday of next week and will be monitoring, among other things, UK compliance. I am sure that the committee will be interested in what has been said on all sides in this debate. I should say also that I have an unusual role in the Committee of Ministers of representing Cyprus against Turkey. The committee meets in the form of representatives from 47 different countries sitting in large concentric circles, and when I listen to the UK in the dock—often in debates that can take hours on a single case—I feel sorry for the excellent diplomatic representatives speaking on behalf of the United Kingdom because they have to put forward the best case they can on the basis of domestic departments which, I am sorry to say, let them down in certain important ways. Sometimes, therefore, they have to make bricks without straw. This imposes unacceptable burdens on the Committee of Ministers when 6,000-plus cases have to be supervised. That even a single British case should take as long as it does imposes an

additional burden, and it is one of the reasons why what we are debating is of great practical importance.

The noble Lord, Lord Dubs, asked why the Law Lords have not taken part in this debate, and the answer is because of the separation of powers that is required by the convention. I commend the Government on having separated the judicial power so that we have a new Supreme Court. That may sound like a purist view, but I am sure in the end it is right constitutionally.

Reference was made to combating unfair attacks on judges and on the Human Rights Act, and I agree with what the Minister said about that. I deeply regret that ever since the Human Rights Bill was introduced, some sections of the media have sought an absolute immunity for the press from any liability for invasions of personal privacy. I was myself lobbied by a large newspaper organisation at the time, and I am glad the Government stood against that lobby. However, it has meant that day after day, unfair attacks are made by self-interested press barons who seek to earn profits out of sometimes gross intrusions on personal privacy. What I particularly deplore is that I and others have used the convention in the interests of the press to get free speech more strongly recognised in our legal system, but the media will not accept a fair balance between free speech on the one hand and honour, reputation and personal privacy on the other. That, I think, is unacceptable both under the convention and to ordinary men and women.

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The Aslef case has been mentioned. I did not raise it because I was embarrassed to do so in view of the fact that I played a role in it, but I agree entirely with the finding of the committee that it is a conspicuously good example of a fair and wise implementation. Neither I nor committee is suggesting that the Government have an overall bad record in terms of implementation of the judgments of Strasbourg. That is not the case.

The burden of our report, in so far as it deals with systemic problems and not individual cases, is that the committee system cannot work properly without a variety of measures being introduced in partnership with the Government. We are hugely overloaded. Week after week, we scrutinise almost every government Bill. We have thematic inquiries. We also take on this unique role, which no other member state's Parliament does, of monitoring compliance with the European Court's judgments.

I listened very carefully to the Minister, who said that we will hear in two months' time the Government's official response to our report. Unless it changes, we heard it today. The only positive thing he was able to say about the systemic recommendations we have made is that we will get action reports, which is good news. But I did not hear him say anything positive about any of the other systemic recommendations. I am sure that he still has an open mind and has not completely rejected them. If he has, it will hamper the role of the committee, which would be a misfortune.

It is fair to say that the experts are looking at the role of the Joint Committee on Human Rights as a model which can be applied in other countries across Europe. That is why we were singled out for special mention at the Stockholm conference. It is the role of the Government in helping the committee to work properly which is still lacking. I appreciate that

the Minister was not able to tell us, even a year after our recommendations were made, what the Government's response will be, but I hope that in two months' time, he will have convinced his colleagues to do better in responding to those recommendations than he has done.

The Minister referred to the Human Rights Act, about which I shall say a couple of things. Whatever the position of the Official Opposition will be towards the Human Rights Act if and when it wins power, certain things have got to remain. There has to be effective remedies in this country for violations of the convention. Otherwise, we get back to the bad old days when lawyers like me would go to Strasbourg for want of domestic remedies. Therefore, politicians may talk about tearing up the Human Rights Act, but whether we have a human rights Act or a British Bill of rights or a British Bill of rights and responsibilities, we are bound on the international and European plain and we cannot dilute those rights or obligations.

The Minister said that the final say lies elsewhere, meaning that it does not lie with the committee, and referred to the supremacy of Parliament. Parliament is controlled by the Executive largely. If the Government have the will, they will be able to give effect to many of our reports.

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I will not add to what has been said on prisoners' voting rights, except to deplore the fact that we cannot be told even now when the next consultation will begin. The Minister talks about practical problems: the Irish have solved them at a stroke by simply saying, "Give them postal votes". Subject to exceptions, that could be done overnight and well before the next general election.

To conclude, we are very grateful for this debate, and for the Minister being called to account. His response is disappointing on systemic reforms. We hope, as he does, that next year we can be much more positive in our annual report, but that will depend on his colleagues being much more positive in their response.

On Question, Motion agreed to.