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McKenzie Gallagher

American University Washington College of Law, mg4917b@american.edu

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TRUTH OR ACCOUNTABILITY: THE HUMAN RIGHTS VIOLATIONS OF THE NORTHERN IRELAND TROUBLES LEGACY AND RECONCILIATION ACT OF 2023

by McKenzie Gallagher*

On January 17, 2024, the Republic of Ireland lodged an inter-state complaint in the European Court of Human Rights (“ECtHR”) against the United Kingdom.¹ The complaint came after the United Kingdom passed the Northern Ireland Troubles (Legacy and Reconciliation) Act of 2023 (“Legacy Act”).² Among other things, the Legacy Act grants immunity to persons who provide information related to any crimes committed during the Troubles, an intense period of political unrest and violence in Northern Ireland between Catholic Republicans and Protestant Loyalists.³ The Legacy Act faced fierce opposition from the international community for its infringement on human rights throughout the legislative process, yet still passed into law.⁴ The present ECtHR inter-state case is not the first between

the Republic of Ireland and the United Kingdom addressing human rights issues which remained after the Troubles. The first case was decided by the ECtHR in 1978, addressing whether interrogation techniques used by British forces during periods of the Troubles was torture and ultimately holding such interrogations techniques only amounted to inhumane and degrading treatment, not torture.⁵ In the 2024 case, Ireland brought forth more violations under articles of the European Convention on Human Rights (“ECHR”) than previously alleged in the 1978 case. Specifically, the Republic of Ireland argues that the United Kingdom violated its human rights obligations under the ECHR, specifically the right to life (article 2), the prohibition against torture (article 3), the right to an effective remedy (article 13), and the prohibition of discrimination (article 14).⁶ In its application to the court, the Irish government also argues that the Legacy Act places the United Kingdom in violation of promises made with the Republic of Ireland under the Good Friday Agreement, which encompasses European and domestic human rights law.⁷

Under the Legacy Act, immunity is granted to perpetrators of crimes and other unlawful acts by the Independent Commission for Reconciliation and Information Recovery (“ICRIR”), a United Kingdom governmental organization with discretionary power for granting immunity.⁸ The ICRIR makes this assessment and grants immunity after applying almost non-existent conditions, which includes the petitioner asking the ICRIR for immunity and telling an account of a Troubles-related crime to the best of their knowledge.⁹ The

* McKenzie Gallagher is a 2L at American University Washington College of Law. She has an LLM from University College Cork in International Human Rights Law and Public Policy and will be working on Troubles related cases in Belfast, Northern Ireland during her 2L summer. Her legal interests are in International Human Rights Law and Humanitarian Law.

1 See Press Release, European Court of Human Rights, New inter-State application brought by Ireland against the United Kingdom, ECHR 014(2024) (Jan. 19, 2024), <https://hudoc.echr.coe.int/eng-press?i=003-7854820-10910604> (laying out Ireland’s argument against the UK).

2 Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, c. 41 (UK) [hereinafter Northern Ireland Legacy Act].

3 *Id.*

4 Newton Emerson, *Everyone Opposes the Troubles Legacy Bill but the Conservatives May Get Away With It*, THE IRISH TIMES (May 26, 2022), <https://www.irishtimes.com/opinion/2022/05/26/everyone-opposes-the-troubles-legacy-bill-but-the-conservatives-may-get-away-with-it/>.

5 See Ireland v. United Kingdom, App. No. 5310/71, para. 137 (Jan. 18, 1978), <https://hudoc.echr.coe.int/fre?i=001-181585>.

6 See Press Release, European Court of Human Rights, *supra* note 1; see also Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [herein after ECHR].

7 See Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, Oct. 4, 1998, 2114 U.N.T.S. 473; see also Roy Carroll, *Ireland to Launch Human Rights Case Against UK Over Troubles Legacy Act*, THE GUARDIAN (Dec. 20, 2023), <https://www.theguardian.com/world/2023/dec/20/ireland-takes-human-rights-case-against-uk-over-troubles-legacy-act> (explaining the Good Friday Agreement was the peace accord signed by the United Kingdom and Ireland to end the Troubles).

8 Northern Ireland Legacy Bill §19.

9 See *id.*; see also Human Rights Committee, Concluding Observations on the Eighth Periodic Report of United Kingdom of Great Britain and Northern Ireland, CCPR/C/GRB/COO/8 (28

United Kingdom argues the Legacy Act's purpose is to obtain and spread information to remedy decades of unsuccessful criminal trials and previously failed truth investigations.¹⁰ After immunity is determined and granted, the ICIR is tasked with publishing a "truth" report of its findings about the specific act.¹¹ However, a major downfall of the Legacy Act is it does not provide any provision which allows the victims or victims' families to challenge the amnesty.

It should be noted that domestic courts in Northern Ireland have also heard challenges to the Legacy Act.¹² The High Court in Belfast, Northern Ireland's civil court, ruled the immunity provision is a breach of human rights under the ECHR.¹³ The case was brought by Troubles victims and their families with support from Amnesty International.¹⁴ The judge presiding indicated, "There is no evidence that the granting of immunity under the act will in any way contribute to reconciliation in Northern Ireland. Indeed, the evidence is to the contrary."¹⁵ The ruling in Belfast will likely be appealed, a process that may take several years, but nonetheless, the judgment is important for the recognition of the Legacy Act's human rights encroachments as the case in the ECtHR moves forward.

Regarding the specific ECHR claims lodged in the ECtHR over the Legacy Act, the Republic of Ireland argues that the sections of the Act which grant immunity violates Article 2 and Article 3 of the ECHR's requirement to take investigative measures and to

prosecute individuals responsible for serious human rights violations.¹⁶ Ireland's claim under Article 13 of the ECHR, the right to an effective remedy, is likewise connected to the investigative and prosecutorial aspects of Article 2 and 3. Lastly, Ireland's Article 14 argument, the prohibition against discrimination, is linked to the idea that the Troubles was a conflict based on discrimination against the Irish Catholic Republicans in Northern Ireland by the Protestant Loyalist majority. While the ECtHR has heard many challenges to amnesty laws in other States, the court has never explicitly ruled amnesty laws are *per se* impermissible, thus this case will be a monumental opportunity for the European human rights system to rule on the legality of amnesties for human rights violations in post-conflict states.¹⁷

Even if Ireland prevails in the ECtHR, whether the United Kingdom will comply with the decision is another hurdle.¹⁸ The Legacy Act left open a grace period until May 1, 2024, for ongoing inquests to continue, but this time has lapsed and a total of thirty-eight inquests into the death or disappearance of more than seventy people will not move forward.¹⁹ This also poses potential issues to restart the litigation process if the ECtHR rules that the Legacy Act violates the ECHR. To hold the United Kingdom accountable for human rights violations stemming from the Legacy Act, an ECtHR ruling paired with advocacy from civil society and other States will be crucial. Ultimately, by granting immunity to perpetrators of unsolved crimes, the United Kingdom is averting its obligations under domestic, regional, and international human rights law and will continue to do so until the Legacy Act's amnesty provision is amended or repealed.

March 2024) (concluding deep concern over the Legacy Act and highlighting the weakness of the ICIR's conditional immunity scheme because of its procedural barriers to criminal investigation, absence of power to guarantee the right for truth to victims, and use of closed material).

10 *Troubles Legacy Act: State bodies "Running Down the Clock"*, BBC (Feb. 14, 2024), <https://www.bbc.com/news/uk-northern-ireland-68293318>.

11 *Id.* at § 17.

12 Julian O'Neill, *NI Troubles: Legacy Act Immunity Clause 'Breaches' Human Rights*, BBC (Feb. 28, 2024), <https://www.bbc.com/news/uk-northern-ireland-68419238>.

13 *Id.*

14 *Northern Ireland: Judgement in Landmark Legal Challenge to Troubles Act*, Amnesty International (Feb. 28, 2024), <https://www.amnesty.org.uk/press-releases/northern-ireland-judgement-landmark-legal-challenge-troubles-act-press-conference>.

15 Roy Carroll, *Amnesty Clause for Soldiers Breaches Human Rights Law, Belfast Court Rules*, THE GUARDIAN (Feb. 24, 2024), <https://www.theguardian.com/uk-news/2024/feb/28/amnesty-clause-for-soldiers-breaches-human-rights-law-belfast-court-rules>.

16 Brian Dooley & Maya Fernandez-Powell, *Ireland Takes British Amnesty Law to Court*, HUMAN RIGHTS FIRST (Jan. 24, 2024), <https://humanrightsfirst.org/library/ireland-takes-british-amnesty-law-to-court/>.

17 See e.g., *Ould Dah v. France*, App. No. 13113/03, 15 (March 17, 2009), <https://hudoc.echr.coe.int/eng?i=001-113014>; *Tarbuk v. Croatia*, App. No. 31360/10 (Dec. 11, 2012) <https://hudoc.echr.coe.int/fre?i=001-115166>; *Margus v. Croatia*, App. No. 4455/10 (Nov. 13, 2012), <https://hudoc.echr.coe.int/fre?i=002-7320>.

18 Diane Duggan, *Northern Ireland Troubles Legacy Act and the Irish Government Response*, Royal Irish Academy – ARINS: Analysing and Researching Ireland North and South, (Jan. 5, 2024), <https://www.ria.ie/news/arins-analysis-and-research-ireland-north-and-south/northern-ireland-troubles-legacy-and>

19 See Rueters, *New UK Law Ends 38 Inquests into Deaths During Northern Ireland's "Troubles"*, REUTERS (May 1, 2024), <https://www.reuters.com/world/uk/new-uk-law-ends-38-inquests-into-deaths-during-northern-irelands-troubles-2024-05-01/>.