

The Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast BT1 2BR
Tel: (028) 9096 1122 Fax: (028) 9024 6706
Website: www.caj.org.uk



Winner of the Council of Europe Human Rights Prize

How to avoid emergency legislation becoming permanent?

Northern Ireland as a Case study by
Maggie Beirne, CAJ's Director at the

4th Roundtable of European National Institutions for the
promotion and protection of human rights and ECHR, in
Athens 2006

Submission No. S.189
Price £1.00

Submission No. S.189
Price £1.00



What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Committee on the Administration of Justice (CAJ) Ltd
45/47 Donegall Street, BELFAST BT1 2BR
Northern Ireland

Tel: (00 44 (0) 28 9096 1122
Fax: (00 44 (0) 28 9024 6706
Email: info@caj.org.uk
Web: www.caj.org.uk

***CAJ works for a just and peaceful society in Northern Ireland
where the human rights of all are protected***



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 28 September 2006

CommDH/NHRI(2006)8 REV
Original version

4th ROUND TABLE
OF EUROPEAN NATIONAL INSTITUTIONS
FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
AND
THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS
Athens, 27-28 September 2006
(Athens Imperial Hotel)

How to avoid emergency legislation becoming permanent?

Case studies to illustrate solutions

by **Maggie BEIRNE**

Director

Committee on the Administration of Justice (CAJ),
Belfast-based NGO, awarded Council of Europe Human Rights Prize



HELLENIC REPUBLIC
NATIONAL COMMISSION FOR HUMAN RIGHTS

How to avoid emergency legislation becoming permanent?

Northern Ireland as a case-study

Remarks by Maggie Beirne,
 Director
 Committee on the Administration of Justice (CAJ),
 Belfast-based NGO, awarded Council of Europe Human Rights Prize

Background

The Committee on the Administration of Justice (CAJ) is a cross community independent non-governmental organisation working on human rights issues since its establishment in 1981. This year it is commemorating its 25th anniversary; in 1998 it was awarded the Council of Europe Human Rights Prize for its work to mainstream human rights and equality provisions into the political negotiations and into the subsequent legislative and institutional arrangements.

Unfortunately, despite the fact that Monica McWilliams of the Northern Ireland Human Rights Commission (NIHRC) and I work a few hundred metres away from each other in Belfast, we have not, and will not, have an opportunity to discuss our respective contributions to the seminar in advance. Hopefully, before we speak, we will be able to coordinate our efforts to make the best use of this session.

For the purposes of sending a short written note in advance, I am however assuming that Monica will have discussed the problems of ‘permanent’ emergency legislation as experienced in Northern Ireland, along lines such as:

- When and how do governments determine that emergency legislation is necessary?
- The safeguards that tend to be quickly jettisoned in the simplistic assumption that “national security” and “human rights” are antithetical rather than complementary
- The routinisation of what is supposedly a short-term and extraordinary measure
- The impact such routinisation has on the institutions of criminal justice, of governance, on independent media, on civil society ...and particularly on the suspect community
- The contribution that the supposed ‘solution’ makes to exacerbating the very problems that the emergency legislation was meant to address.
- Most importantly, how do governments manage to escape effective scrutiny when the “emergency” is maintained on a ‘semi’ permanent basis?
- In the UK case, the experience of NI seems to have led to the passage of UK-wide counter-terrorist legislation which encompasses most of the provisions that prevailed under the supposed ‘temporary emergency’ provisions of the past.

Solutions

CAJ’s experience of the ‘solutions’ to be explored can be categorised as follows:

- stricter external and international control of when emergencies are declared, what steps are taken in response to the declaration of an emergency (see below), how those

safeguards operate in practice and most importantly criteria for determining when and how the extraordinary measures should be re-visited

- domestic legislative and institutional safeguards to be insisted upon – independent reviewers, reporting to parliament, use of courts to challenge, national human rights institutions, independent arrangements for visiting detention centres, raft of counter-torture measures such as limited periods of detention, access to lawyers, medical personnel, families etc.
- support for an independent media and defence of those journalists attacked for criticising the state response, and willing to take unpopular stances in defence of human rights
- ditto for independent NGO sector, members of legal profession, independent minded judges etc.
- research to be commissioned and data routinely gathered on impact of the legislation, particularly disaggregated by the groups it is most likely to impact upon. It is vital that society know who is being impacted by the powers, and demand justification for differential impacts.
- specialist training for the police, judiciary, prison authorities to counter racist or other attitudes that bring the extraordinary powers to bear most severely on certain groups in society

Attached herewith please also find the press release issued by the Eminent Jurists Panel at the end of their visit earlier this year to Northern Ireland. The Panel (chaired by South African Justice Chaskalson) heard from a wide range of official experts, and individual victims, and summarised some of the key messages they heard during the course of their visit in the press statement. Since the topic they sought input on was “Terrorism, Counter Terrorism and Human Rights”, it clearly has a direct relevance to the topic under discussion to this agenda item. As local host to the visit, CAJ can speak to the various points the Panel make in their statement; we will be finalising our own submission to the Panel in the light of the various testimonies received, and will be making this available in the near future.

Northern Ireland introduced many of the safeguards that we will be talking about, and yet still suffered serious human rights violations. It will be helpful to explore with other contributors what lessons our tragic experience can offer to other jurisdictions.

CAJ
 45-47 Donegall Street
 Belfast BT1 2BR
 Tel: (44) (0) 2890 961122
 Fax: (44) (0) 2890 246746
 E: Maggie@caj.org.uk
 Web: www.caj.org.uk

Annexe: Press release - EMINENT JURISTS END VISIT TO NORTHERN IRELAND

Members of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, Justice Arthur Chaskalson (South Africa) and Justice Raul Zaffaroni (Argentina), concluded their visit to Northern Ireland today.

The hearing, which was organised by the Committee for the Administration of Justice (CAJ), was the fourth in a series of hearings within the global inquiry of the Panel into the impact of terrorism and counter-terrorism on human rights and the rule of law.

The Panelists appreciate that Northern Ireland has a distinct history and that events here must be seen and understood in the context of that history. Lessons can, however, be learnt from what has happened in Northern Ireland.

Those from whom the Panel members heard included academics, legal practitioners, representatives of non-governmental organisations, the Northern Ireland Human Rights Commission and political parties. They also heard directly from members of the public, including victims of terrorist and counter-terrorist operations and their family members. The Panel heard the views of delegations from the Police Service of Northern Ireland, the Courts Service, the judiciary, the Public Prosecution Service, the Law Society and the Bar Council.

It was stressed by various persons who made representations to the Panelists that

- a) The intensity of the violence which marked the conflict put Northern Ireland under great stress;
- b) It is necessary to confront and address the causes of terrorism in addition to taking measures to prevent and curtail it;
- c) The vesting in security forces of wide and discretionary powers which are not subject to strict control can easily lead to abuse, and this has in fact happened in Northern Ireland;
- d) The misuse of exceptional powers is counter-productive, causes resentment within suspect communities and is likely to exacerbate grievances that fuel the conflict;
- e) It is important that there should be an institutional culture of respect for human rights within the security forces and that independent bodies with appropriate powers should be established to review the efficacy of, and manner in which the exceptional powers are exercised and to receive and investigate complaints;

- f) Abuses by security forces should be dealt with promptly and transparently, if this is not done a culture of impunity is likely to develop, and this can have serious adverse consequences likely to bring the administration of justice into disrepute;
- g) Measures which have been introduced in recent years including the use of video and audio recording when taking statements, the appointment of a police ombudsman, a policy of transforming the police service into a body representative of the community as a whole, and encouraging greater transparency in the functioning of the service have had a beneficial impact.
- h) Concern was expressed about the absence of legal provisions for full and transparent investigations of deaths where there are suspicions of state involvement. In this regard the recently enacted Inquiries Act, 2005 was criticised as adversely affecting the independence of inquiries that may be carried out under its provisions.

The Panelists met family members of persons who have lost relatives as a result of unlawful killings and who have been struggling for many years to have full and transparent investigations of the circumstances in which those deaths occurred. They have suffered much anguish as a result of the failure to do so. The Panelists urge the authorities to address this real and substantial grievance.

The panel will study these and other issues brought to its attention in more detail. It will conduct similar hearings in other parts of the world and complete its report when the hearings process is completed.

The Panel would like to thank all those who have made written and oral submissions to the Panel. The information the Panel has received will be of great value in preparation of the Panel's report.

Background

The Panel is composed of eight judges and lawyers from all regions of the world. The Panel exercises its mandate independently, with the logistical support of the ICJ Secretariat and its network of organizations. Arthur Chaskalson, former Chief Justice and first President of the Constitutional Court of South Africa, chairs the Panel. The other members are Georges Abi-Saab (Egypt), Robert K. Goldman (United States), Hina Jilani (Pakistan), Vitit Muntarbhorn (Thailand), Mary Robinson (Ireland), Stefan Trechsel (Switzerland) and Raúl Zaffaroni (Argentina). *The members visiting Northern Ireland were: Justice Arthur Chaskalson former Chief Justice of South Africa and first President of South Africa's Constitutional Court and Justice Zaffaroni of the Supreme Court of Argentina.*