

CAJ's submission no. S297

CAJ's submission to the
Northern Ireland Office on

Non-Jury Trial Arrangements in
Northern Ireland

March 2011

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 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, Joseph Rowntree Charitable Trust and the Oak Foundation.

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

Rt Hon Owen Patterson MP
Minister of State for Northern Ireland
Northern Ireland Office
Stormont House
Stormont Estate
Belfast BT4 3SH

11 March 2011

Re: “Non-Jury Trial Arrangements in Northern Ireland”

Thank you for your letter of 14th February 2011 inviting the Committee on the Administration of Justice (CAJ) to give our views on the non-jury trial system in light of the upcoming expiration date of the present arrangements. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

As stated in previous consultations and publications on this issue, CAJ recommends that the right to trial by jury be restored in all cases.

UN Human Rights Committee

In November 2007 the UN Human Rights Committee raised concerns regarding right to a fair trial (ICCPR art.14), specifically highlighting the Justice and Security (Northern Ireland) Act 2007 and the use of non-jury trials.¹ The UK government's response to these issues indicated that the primary justification for non-jury trials in Northern Ireland is to avoid '*paramilitary and community based pressures on jurors*'.²

In July 2008, in its examination of the government, the UN Human Rights Committee (HRC) expressed concern that '*some elements of criminal procedure*

¹ CCPR/C/GBR/Q/6. 13 November 2007.

² CCPR/C/GBR/Q/6/Add.1. 18 June 2008

*continue to differ between Northern Ireland and the remainder of the State party's jurisdiction*³ and specifically highlighted non-jury trials and conveyed concern that there is 'no right to appeal the decision' made by the DPP.⁴

The Committee stated that the government should carefully monitor whether the situation in Northern Ireland warrants judicial procedures that are intrinsically different of the rest of the UK *'with a view to abolishing'* such distinctions.⁵

On 3rd March 2010, the NIO issued a press release, which stated that the government would undertake a *'comprehensive review* of the non-jury trial system, including a full public consultation, before it next falls to be renewed in July 2011' (emphasis added). Whilst we are aware that the government administration has changed since March, we believe that the government should follow through with this commitment, which should include a full Equality Impact Assessment, as well as take on board the call of the United Nations Human Rights Committee to scrutinise whether such restrictive legislative provisions in Northern Ireland continue to be justified.

Juror Intimidation

The government's response to the Human Rights Committee states that *'it is difficult to judge the level of juror intimidation in Northern Ireland'* yet concludes that *'it remains prevalent, and intimidation more generally is a growing problem.'*⁶ The government has failed to provide any substantial evidence to this end.

Moreover, in his final report the Justice Oversight Commissioner (JOC) conveyed that *'special arrangements [to counter juror intimidation] can be made for witnesses or victims who have particular concerns, but it has rarely been necessary in practice to take special steps.'*⁷

Since September 2002, when *A Policy for Countering Intimidation on Court Premises* was issued, the JOC reported in 2006 that *'ten cases of possible intimidation, of which two involved jurors, have been recorded by the Court Service and these were dealt with promptly and appropriately. The risk of intimidation*

³ CCPR/C/GBR/CO/6 30 July 2008. This was also noted previously by the HRC in its Concluding Observations in 2001. See CCPR/CO/73/UK; CCPR/CO/73/UKOT 6 December 2001.

⁴ CCPR/C/GBR/CO/6 30 July 2008

⁵ CCPR/C/GBR/CO/6 30 July 2008

⁶ CCPR/C/GBR/Q/6/Add.1 18 June 2008

⁷ Justice Oversight Commissioner. *Sixth Report of the Justice Oversight Commissioner*. June 2006.

particularly of jurors by means outside the vigilance of the court remains a matter for concern on some occasions.’⁸

There continues to be no substantive body of evidence within the public domain to suggest that there is a serious problem of juror intimidation in Northern Ireland that necessitates non-jury trials. CAJ suggests (as it has in previous submissions in this regard) that consideration be given to the use of ‘out of town juries’ in order to further facilitate juror protection measures already in place. We also believe that further jury reforms could make the possibility of juror intimidation less likely.

Non-Jury Trial Certificates – Human Rights Implications

Under the arrangements of the Justice and Security (Northern Ireland) Act 2007 the Director of Public Prosecutions (DPP) for Northern Ireland may issue a certificate which allows a trial on indictment of the defendant to be conducted without a jury if certain conditions, as set out by s1 of the Act are met. In order to issue a certificate, the DPP must be ‘satisfied’ that ‘*there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury*’. However, CAJ feels that the term ‘satisfied’ demonstrates a very low threshold and permits a broad application of the power to issue certificates, even when applied in conjunction with the prescribed conditions.

When we requested information from the PPS regarding the number of cases designated for non-jury trials, we were directed to the Northern Ireland Courts and Tribunals Service (NICTS). This would suggest that the PPS does not maintain these statistics, which raises questions around procedure and monitoring, and the seriousness with which such decisions are made.

The UN Human Rights Committee interprets the ICCPR ‘*as requiring that objective and reasonable grounds be provided by the appropriate prosecution authorities to justify the application of different rules of criminal procedure in particular cases (art. 14).*’⁹ Even in light of the government’s assurance of ‘safeguards such as reasoned verdicts’¹⁰ the UN Human Rights Committee remains apprehensive about the provisions which allow for cases certified by the Director of Public Prosecutions to be ‘*tried in the absence of a jury*’.¹¹

⁸ Justice Oversight Commissioner. *Sixth Report of the Justice Oversight Commissioner*. June 2006.

⁹ CCPR/C/GBR/CO/6 30 July 2008

¹⁰ CCPR/C/GBR/Q/6/Add.1 18 June 2008

¹¹ CCPR/C/GBR/CO/6 30 July 2008

CAJ believes that the high degree of discretion given to the DPP by the Justice and Security (Northern Ireland) Act 2007 is questionable in this regard, particularly as oversight of the PPS has decreased through the arrangements under devolution. Bearing in mind the need to foster public confidence in the Public Prosecution Service, and ensuring the independence of the Public Prosecution Service, we believe that the present arrangements regulating the PPS do not satisfactorily hold the PPS accountable.

Other human rights concerns regarding this degree of discretion exist. That a certificate permitting a non-jury trial may be issued if the DPP ‘suspects’ that the defendant is (or has been) a member of a proscribed organisation, or has (or has had) a relationship with a member of a proscribed organisation raises questions regarding discrimination; the right to respect for private and family life; and freedom of association (ECHR 14; 8; and 11 and corresponding articles of the ICCPR). That the rights of family and friends of members (or former members) of proscribed organisations may be consequently violated is unacceptable as this condition is highly subjective.

Like the UN Human Rights Committee, CAJ is concerned about the restrictions on challenging the issuing of certificates. The right to legal challenge, particularly judicial review, is a basic right which was acknowledged by the NIO in its original 2006 consultation paper regarding the replacement of Diplock Courts, which stated: *‘As is the case with all administrative decisions, the DPP’s decision will be challengeable by means of judicial review. This will enable defendants to be sure that the decision has been taken properly’*.¹² The right to effective remedy is guaranteed by the ECHR (art.13). The inclusion of section 7 (1)(c) of the Justice and Security (Northern Ireland) 2007 Act which allows for judicial review based on ‘exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law)’ does not assuage the concerns made by CAJ in response to Justice and Security Bill proposed in 2006.

We note that a case is currently challenging the use of Diplock trial on a number of grounds and is likely to seek leave to appeal to the Supreme Court (In re Brian and Paula Arthurs). We are monitoring this case closely and note *inter alia* that: the fact that the defence cannot view the material/evidence that underpins the DPP’s decision is an infringement of rights; the fact that no change to the decision following review can be made by the DPP also breaches principles of human rights; the DPP is not a neutral decision-maker given her/his role in prosecuting the case against the accused at trial; and the decision to opt for Diplock trial casts an immediate prejudicial air on the defendant and again, in

¹² Para. 4.12 ‘Replacement Arrangements for the Diplock Court System: A Consultation Paper’, August 2006.

our view, breaches fundamental human rights. All these are indications of the provenance of these powers in emergency law. In current circumstances, we should be seeking to get rid of emergency law, not embed it.

Repercussions – Public Confidence

CAJ is aware of the government’s responsibility to ensure the safety and security of those members of the public who participate in the criminal justice system as jurors. However, CAJ believes that non-jury trials are unwarranted given that Northern Ireland is not in an emergency situation and that measures which are less restrictive than non-jury trials may be applied in order to secure juror safety. Although there has been a marked decrease in non-jury trials over the past four years¹³, the present arrangements continue to treat Northern Ireland as an emergency situation, which perpetuates a lack of confidence in the rule of law.

While it may be argued that judges sitting alone can impartially and independently hold trial and that, therefore, non-jury trials are not *necessarily* a breach of the right to a fair trial (ECHR art 6; ICCPR art.14), jury trials are inexorably linked to the common law system. Legislation and practices that undermine this principle weaken public confidence in the criminal justice system and the overall peace process in Northern Ireland.¹⁴ In the words of the Criminal Justice Review, jury trials constitute ‘*a symbol of normality with all that means for public confidence*’.¹⁵

The Conservative party has long maintained that the right to trial by jury needs to be protected and strengthened.¹⁶ We support this view.

¹³ According to information provided by NICTS, there were 64 non-jury trials in 2007 (all under the Terrorism Act); 33 in 2008 (15 under the Justice and Security Act & 18 under the Terrorism Act); 17 in 2009 (13 under the Justice and Security Act & 4 under the Terrorism Act); and 17 in 2010 (all under the Justice and Security Act). Email dated 7 March 2011 on file with CAJ.

¹⁴ Over ¾ of the population of Northern Ireland believe that juries (after direction from a judge) are better at deciding cases in the Crown Court than judges sitting alone. Kristine Amelin, Michael Willis and Debbie Donnelly. *Attitudes to the Criminal Justice System in Northern Ireland*. March 2000.

¹⁵ Criminal Justice Review Group. *Review of the Criminal Justice System in Northern Ireland*. March 2000.

¹⁶ See for example, the speech by David Cameron ‘Giving power back to people’ from 25 June 2009. Available at:

The introduction of jury trial for all cases would be a way to acknowledge and commend the enormous political and social progress which Northern Ireland has made in the past decade, resulting in reciprocal confidence between the people and the state. Maintaining echoes of the legal regime from the conflict undermines such progress.

CAJ feels that jury trials are a fundamental component of the rule of law within the common law system and that non-jury trials are unwarranted in Northern Ireland at present. To this end, **CAJ suggests the introduction of jury trials in all cases for a set period after which a consultation could take place and the onus to prove non- jury trials as necessary or more effective would be on those who wish to have them re-instated.**

However, if the arrangements for non-jury trials are to be again renewed, **CAJ suggests that the exceptions to non-jury trials be minimal; stricter conditions be required for the DPP to issue a certificate; the ability to challenge the issue of certificates not be subject to stringent limitations; and that certificates issued are adequately justified by the DPP.**

Yours Sincerely,

Mike Ritchie
Director

http://www.conservatives.com/News/Speeches/2009/06/David_Cameron_Giving_power_back_to_the_people.aspx See also HM Government. The Coalition: our programme for Government, May 2010.

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