

CAJ's submission no. S358B

**2nd Addendum to CAJ's and PFC's
joint submission to the
Committee of Ministers
in relation to the supervision of
Cases concerning the action of the security
forces in Northern Ireland**

September 2011

**Submission to the Committee of Ministers from the
Committee on the Administration of Justice (CAJ) & the Pat Finucane Centre (PFC) in
relation to the supervision of**

Cases concerning the action of the security forces in Northern Ireland.

Jordan v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
McKerr v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
Shanaghan v the United Kingdom, judgment of 4 May 2001, final on 4 August 2001
McShane v the United Kingdom, judgment of 28 May 2002, final on 28 August 2002
Finucane v the United Kingdom, judgment of 1 July 2003, final on 1 October 2003

September 2011

We respectfully request that this brief submission is also put before the meeting of the 1120DH Ministers' Deputies to be considered in conjunction with our earlier submissions.

CAJ and the PFC have previously outlined our grave concerns at the issues arising from the OPONI, which are reflected in the findings of the report, prepared by the Criminal Justice Inspection Northern Ireland (CJINI), and wish to also draw to the Minister's attention the briefings by the CJINI, OPONI and Minister of Justice before the Justice Committee of the Northern Ireland Assembly on 8 September 2011.

The Chief Inspector of Criminal Justice, Dr Michael Maguire, stated that "*the status quo is not acceptable*" in respect of "*the way in which the organisation is managed and investigations are undertaken. Changes are needed.*"¹

We therefore note with concern the comments of the Police Ombudsman, Mr Al Hutchinson, who when asked by a member of the Justice Committee did he accept the CJINI report stated "*I have already said that I do not agree with everything in the report but that I agree with the recommendations.*"²

This raises grave concerns about his independence and capacity to implement the reforms as proposed in the CJINI Report, following the finding of a "lowering of operational independence" by the Office in dealing with historic cases.

¹ Pg 18 Official Report (Hansard), CJINI Report on the Police Ombudsman: CJINI, 8 September 2011, ([Hansard](#)) [CJINI Report on the Police Ombudsman: CJINI](#)

² Pg 16 ,Official Report (Hansard), CJINI Report on the Police Ombudsman: Police Ombudsman, 8 September 2011, ([Hansard](#)) [CJINI Report on the Police Ombudsman: Police Ombudsman](#)

During his briefing to the Justice Committee the Police Ombudsman also stated:

“You are probably aware that, as a police oversight commissioner, I made comments on leaving about the Historical Enquiries Team and the Police Ombudsman’s office being blunt instruments to deal with the past. It was an important statement that has followed me through. What I did not realise until I came to the office was that it had 80 cases on the shelf that were not being investigated. The public were not aware of that. The office had struggled to deal with that and get more resources, which were inadequate. The model that was chosen was inadequate. In May 2008, I put a business case to the Secretary of State in the Northern Ireland Office. I reviewed that and put it back in again in December. I was then told that we would not get the resources.”³

He further stated:

“Make no mistake: as I have said from the beginning, although I believe that our office is not the proper one to deal with historical legacy issues, somebody must. In the absence of anybody else doing that, we will.”⁴

“I have made my view clear and I will certainly repeat it: this (historical cases) will destroy the office, whoever is there and whatever processes are involved.”⁵

In consideration of the above statements made by the current Police Ombudsman, we urgently call upon the Committee to continue to supervise the OPONI as a general measure, pursuant to Interim Resolution [CM/ResDH\(2007\)73](#), and to raise the issue of a properly resourced and empowered body to address the issues of accountability and ensure independent effective investigations in historic cases where they have been or may be human rights violations. We note the government’s response but do not believe it addresses these concerns.

In light of the briefing by the Police Ombudsman to the Justice Committee, we refer again to Resolution 1787(2011) of the Parliamentary Assembly of the Council of Europe which asserts the need for the Assembly and the national parliaments to ‘*play a much more proactive role*’ in respect of the execution of judgments as if this is not

³ Pg 23 Official Report (Hansard), CJINI Report on the Police Ombudsman: Police Ombudsman, 8 September 2011, ([Hansard](#)) [CJINI Report on the Police Ombudsman: Police Ombudsman](#)

⁴ Pg 24, Official Report (Hansard), CJINI Report on the Police Ombudsman: Police Ombudsman, 8 September 2011, ([Hansard](#)) [CJINI Report on the Police Ombudsman: Police Ombudsman](#)

⁵ Pg 30, Official Report (Hansard), CJINI Report on the Police Ombudsman: Police Ombudsman, 8 September 2011, ([Hansard](#)) [CJINI Report on the Police Ombudsman: Police Ombudsman](#)

done 'the key role of the Convention...in guaranteeing the effective protection of human rights in Europe, is likely to be put in jeopardy.'

This resolution also endorsed the Interlaken priority of '*full and expeditious compliance with the Court's judgments*' and the COM Recommendation CM/Rec (2008)2 as to efficient domestic capacity for rapid execution of judgments and we call on the Committee to ensure compliance with this.

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