

Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) in relation to the supervision of the cases concerning the action of the security forces in Northern Ireland (S460)

Jordan v the United Kingdom, judgment final on 4 August 2001
Kelly and Ors v the United Kingdom, judgment final on 4 August 2001
McKerr v the United Kingdom, judgment final on 4 August 2001
Shanaghan v the United Kingdom, judgment final on 4 August 2001
McShane v the United Kingdom, judgment final on 28 August 2002
Finucane v the United Kingdom, judgment final on 1 October 2003
and
Hemsworth v UK, judgment final on 16 October 2013
McCaughey & Others v UK, judgment final on 16 October 2013

February 2017

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 (FIDH). Its membership is drawn from across the community.

This Rule 9 communication is for consideration at the 1280th meeting of the Ministers' Deputies in March 2017. CAJ has regularly made Rule 9 communications to the Committee of Ministers on the 'McKerr group of cases'. These submissions have charted the evolution of the 'package of measures' agreed to by the UK further to the above judgments, and their proposed replacement with measures agreed by the UK and Ireland, and political parties in the Northern Ireland Executive, under the December 2014 Stormont House Agreement.

2014 Stormont House Agreement

In December 2014 the British Government published the Stormont House Agreement (SHA), the result of talks involving the parties in the Northern Ireland Executive and the British and Irish Governments. The SHA provided for a new set of institutions to deal with the legacy of the Northern Ireland conflict, including a new 'Historical Investigations Unit (HIU)' to conduct Article 2 compliant investigations into conflict-related deaths. The SHA also provided for measures to maintain and make legacy inquests Article 2 compliant.

Our previous submissions of April and October 2016¹ provide detail as to the series of events which have led to a delay in the implementation of the SHA legacy provisions. In summary the legislation for the HIU was derailed further to the proposed insertion by the UK of a ministerial power to redact the contents of independent investigation reports by the HIU on undefined 'national security' grounds. In relation to inquests, whilst the Lord

¹ S454 [Submission to the Committee of Ministers from CAJ in relation to the supervision of the cases concerning the action of the security forces in Northern Ireland April 2016.](#)

Chief Justice for Northern Ireland produced a blueprint for their implementation through a Legacy Inquests Unit, the UK has withheld the necessary funding for the Unit.

The Deputies Decision of December 2016

The Ministers' Deputies most recently pronounced on this group of cases at their 1273rd meeting – 6-8 December 2016. In summary they:

- Expressed concern that the HIU and other Stormont House Agreement institutions had still not been legislated for;
- *“called upon the authorities to take all necessary measures to ensure the HIU can be established and start its work without any further delay, particularly in light of the length of time that has already passed since these judgments became final, and the failure of previous initiatives to achieve effective, expeditious investigations;”*
- Called on the authorities to ensure that a proposed public consultation on the SHA legislation was launched and legislation introduced into Parliament to establish the HIU without further delay;
- Regretted the necessary resources had not been provided for the Legacy Inquest Unit and strongly urged the authorities as a matter of urgency to implement the Lord Chief Justices plan and to ensure timely disclosure to inquests.

Key Developments since December 2016

- **Further delay of SHA implementation legislation**

At the time of the publication of the Deputies Decision the Secretary of State for Northern Ireland announced a further and potentially indefinite delay to its establishment. The Secretary of State also introduced a pre-condition of 'political consensus' between Northern Ireland parties for any further progress, essentially providing for a veto for those opposed to independent investigations.²

- **Continued withholding of resources for the Legacy Inquests Unit**

The State Party has continued to withhold the resources from the judicial system to establish the Legacy Inquest Unit.

- **Collapse of Northern Ireland Government**

The Northern Ireland Executive has collapsed and fresh elections have been called for the 2 March 2017. Whilst a scandal regarding the allocation of public resources and potential corruption has been the headline issue, the failure to implement the SHA legislation and other previous agreements has also been cited and is likely to feature heavily in anticipated post-election negotiations prior to any establishment of an Executive.

² <http://www.bbc.co.uk/news/uk-northern-ireland-38147206>

- **UK Media and Political discourse attacking application of rule of law in legacy cases**

Further to the first post-Belfast/Good Friday Agreement decision to prosecute a British Army soldier in relation to a conflict legacy death there has been a considerable response from prominent sections of the UK media and elements of the political establishment attacking the decision and any prospect of further prosecutions of soldiers. The attacks, including comments from Members of the UK Government, have involved allegations that the criminal justice system is operating in a biased manner in relation to legacy cases. The broader discourse has also included a pattern of statements attacking human rights defenders, in particular lawyers and NGOs, and also law officers, most notably the Director of Public Prosecutions. The discourse has included considerable elements of clear misinformation, bordering on propaganda, which have included claims that the current legacy mechanisms are exclusively focusing on the armed forces. There have been consequent calls for an amnesty or ‘statute of limitations’ for military personnel.

On the 12 December 2016 CAJ wrote to the UN Special Rapporteurs on the independence of lawyers and judges and human rights defenders to raise concerns for the safety of human rights lawyers working on Northern Ireland conflict cases in light of newspaper coverage. Subsequently CAJ along with the FIDH and Liberty wrote to the Secretary of State to raise this issue and also the subsequent attacks on law officers. Copies of this correspondence and the Secretary of States response are included in this communication as appendices.

Since this correspondence, whilst the Secretary of State James Brokenshire has been more careful not to be drawn into criticism of individual law officers, the general trend has continued of the UK Executive criticising the judicial system as having a disproportionate focus on the military. This is despite this claim being clearly contradicted by statistics produced from both the prosecution and police services.³ A former Northern Ireland Justice Minister, David Ford MLA, has raised concerns around the Secretary of State’s comments on the ‘balance’ of prosecutions, stating "Politicians have a duty to support the impartial operation of the institutions of the Justice system. The comments from James Brokenshire on prosecutions come perilously close to interfering in the rule of law."⁴

The discourse has included the reiteration that the security forces were ‘only’ responsible for 10% of the deaths during the conflict, a figure which entirely excludes deaths caused by the collusion of public authorities with paramilitaries. There have also been ongoing attacks on those seeking remedies for alleged human rights violations in

³ <http://www.bbc.co.uk/news/uk-northern-ireland-38752683> and <http://www.bbc.co.uk/news/uk-northern-ireland-38844453>

⁴ <https://allianceparty.org/article/2017/0010948/ford-criticises-brokenshire-comments-on-prosecutions>

Northern Ireland, and on law officers. Most recently the Prime Minister, Theresa May, stated in the UK Parliament on that she found it “absolutely appalling when people try to make a business out of dragging our brave troops through the courts” and reiterated the position that the present system was disproportionately against the security forces.⁵

Committee on the Administration of Justice
February 2017

⁵ Official Report (Hansard) PMQ 22 February 2017 <https://hansard.parliament.uk/commons/2017-02-22/debates/A31B6DEF-BB99-46F6-A49F-37FFF90D70C5/FormerMilitaryPersonnelNorthernIreland>