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Winner of the 1998 Council of Europe Human Rights Prize

CAJ's submission to the

Review of Criminal Injuries Compensation (NI)

December 1998

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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 whole 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, 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, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill 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.

CAJ's Submission to the Review of Criminal Injuries Compensation (NI)

1. We applaud the fact that under the Criminal Injuries (Compensation) (NI) Order 1988 Northern Ireland has its own tailor-made scheme for compensating victims of violent criminal attacks. In most respects the law appears to us to be working satisfactorily, but we acknowledge that in a minority of situations victims of crimes do not receive the compensation which right-thinking people would hold to be their due. In this submission we wish to draw attention to five particular points which we believe merit reform.

2. First, the requirement in article 5 of the 1988 Order that the victim or his or her representative must have made a complete report of the criminal injury to the police "forthwith", or at least within 48 hours of the commission of the injury, is in our view too restrictive. There must be many situations where such immediate detailed reporting is not feasible or, even, not advisable (as may well have been the case in *Doak v Secretary of State* [1994] 1 BNIL 24, where a man alleged that he had been abducted and beaten up in a car but was unable, or unwilling, to provide more information about the possible identity of his attackers. Many victims will be traumatised by what happened to them and will not be able to give an accurate account of the incident until many days later. Those who have suffered punishment attacks at the hands of paramilitaries may be particularly reluctant to provide information so quickly to the police, for fear of further reprisals. This is possibly what happened in *D (A Minor) v Secretary of State* [1997] 4 BNIL 14, where a 15-year-old was beaten with iron bars and then waited for 18 days before making a written statement to the police. There is at least one case where someone who was not the victim of a punishment attack was nevertheless allowed to recover damages despite being unhelpful to the police in their pursuit of the perpetrator: *Davidson v Secretary of State* [1994] 7 BNIL 12. Nor do we believe that the legislation rectifies the problem by permitting the Secretary of State to extend the reporting period to what he or she considers reasonable having regard to all the circumstances.
We would prefer a longer permissible reporting period of two weeks, or at least a requirement that, while the police need to be notified of an incident within 48 hours, a complete report does not have to be made until two weeks have elapsed.

3. Second, we regret the fact that the courts have interpreted the 1988 Order in a manner which excludes any future exercise of the prerogative power to award compensation to victims of criminal attacks (see *In re MW's Application* [1998] 7BNIL 16 (CA)). We do not believe that such an interpretation is the only possible one under the law. It has the unfortunate consequence that some victims in Northern Ireland are denied compensation even though their counterparts in England and Wales would not be. It seems that this is a particular anomaly in the cases of sexually abused children, where the practice in England is to award compensation in later life but not in Northern Ireland. **We would suggest that the 1988 Order should be amended to allow the prerogative power to remain available in exceptional cases.**

4. Third, we disagree strongly with the blanket exclusion from compensation enshrined in article 5 (9) (b) of the 1988 Order (no compensation is payable to a person "who has been engaged in the commission, preparation or instigation of acts of terrorism at any time whatsoever, or is so engaged"). We realise that in *Curran v*

Secretary of State for Northern Ireland [1997] 2 BNIL 15 the Northern Ireland Court of Appeal held that this exclusion affects even people who engaged in terrorism prior to the introduction of the exclusion by the 1977 Order, but of course it may be that section 3 (1) of the Human Rights Act 1998 will oblige a court to hold that the words "at any time whatsoever" must now be interpreted to mean "at any time after the coming into force of the 1977 Order".[1]

5. Apart from this, however, we feel that the exclusion from compensation in article 5 (9) (b) is far too wide. It is not confined the cases where the applicant for compensation has been previously *convicted* of terrorist acts and it ignores completely what may have happened to the applicant between the acts of terrorism in question and his or her subsequent application for compensation. The person may, for example, have paid a price for the acts of terrorism by serving a period in prison. He or she is then surely entitled to be rehabilitated, and may otherwise have a right not to have the conviction referred to if it is "spent" under the Rehabilitation of Offenders (NI) Order 1978. To apply the exclusion from compensation automatically to an applicant years after an ignominious episode in his or her past is contrary to natural justice and to the rule of law. **At the very least we propose that the Secretary of State should be granted a discretion in this matter, with the onus being on the Secretary of State to justify the exclusion from compensation in any particular case.**

6. A related point is that the exclusionary rule under article 5 (9) (b) affects even the dependents of persons who have died as a result of a violent offence. It seems to us unacceptable that a loss of dependency should be automatically uncompensatable merely because of the deceased's previous past involvement in terrorism. The dependents should not be disadvantaged in this manner, since their loss is just as real regardless of the antecedents of the person who has died. **We recommend that the 1988 Order be amended to reflect this reality.**

7. Fourth, for similar reasons we have reservations about the way in which the reimbursement rules operate under the 1998 Order. They seem to mean that, years after an award of compensation has been made to a victim, the perpetrator of the crime can be made to reimburse the state if he or she receives any form of state benefit at all, even benefits in the form of exemplary damages for a tort committed against the perpetrator by prison officers (as in *Hamilton and Kerr v Secretary of State* [1994] 6 BNIL 29, where the damages had been awarded more than 13 years after the crimes committed by the applicants). **It would appear to us to be more just if this right to reimbursement were made to apply only during a fixed period subsequent to the perpetration of the crime in question (say three years, the standard limitation period in actions for personal injuries).** It also appears unjust that one of several joint offenders can be made to reimburse the full amount paid out by the state to a victim (as in *Secretary of State v McClure* [1995] 6 BNIL 13). **It would seem more equitable, certainly where others amongst the offenders have the means available, to require joint offenders to share the duty to make reimbursement payments.**

8. Fifth, we do not agree with the current legal rule which holds that a threat cannot amount to a "violent offence" for the purp9oses of the 1988 Order (see *e.g. D v Secretary of State* [1998] BNIL 10). This rule excludes from compensation a whole range of persons who have been the victims of intimidation by gangsters, racketeers

[1] S.3 (1) reads: "*So far as it is possible to do so,* primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights" (emphasis added).

and paramilitaries. If they have suffered an identifiable impairment of their mental condition we see no reason in principle why they are less deserving of compensation than those who have been physically attacked. In any event, some of the case-law on what amounts of a violent offence seems hard to reconcile, *e.g. Blackender v Secretary of State* [1994] 2 BNIL 25 (72-year-old lady knocked over by three youths running along a city centre street: held to be a violent offence), *X v Secretary of State* [1995] 5 BNIL 22 (blackmail and intimidation by paramilitaries demanding protection payments from a businessman: held not to be a violent offence), *Connolly v Secretary of State* [1994] 2 BNIL 24 (CA) (bystander affected by police gunfire aimed at escaping criminals: held not to be a violent offence). **We recommend that an amendment be made to article 2 (2) (a) of the 1988 Order to ensure that the words "violent offence" are given a more expansive definition than is currently provided within case-law.**

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