



Justice and Security (Northern Ireland) Bill

Committee Stage, January 2007

Briefing paper from the Committee on the Administration of Justice (CAJ)

The Committee on the Administration of Justice (CAJ) is an independent non-governmental human rights organisation that monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. The organisation was awarded the Council of Europe Human Rights Prize in recognition of its work to place human rights and equality provisions at the heart of the peace agreement secured in 1998.

Below are some very brief comments on the proposals contained in the Justice and Security (Northern Ireland) Bill which we hope will help inform the debate in Committee stages. If time allows, we may provide a more detailed commentary. In the interim, however, we are happy to discuss the points below with any Committee member who wishes to do so.

Trials without jury

CAJ is opposed to the retention of trials without jury (the so-called Diplock system). In our submission to the consultation on this issue (attached for convenience) we provide comments on the specific proposals in the context of our belief that the right to trial by jury should be restored in all cases. The same principle applies here.

In particular, in our submission to the consultation we highlighted our concern that any test to be administered by the Director of the Public Prosecution Service risked being vague and subjective. The test outlined in these proposals does not assuage our fears – indeed the conditions set are so wide as to effectively maintain the status quo – this is not therefore a genuine reform of the Diplock system as contended. In particular:

Section 1(2)(a) requires the Director only to “suspect” and on the basis of this suspicion conclude that there is a “risk that the administration of justice might be impaired.”

This places undue discretion in the hands of the PPS – these statutory provisions therefore need to be tightened and need to be accompanied by a statutory requirement to give reasons for any decision to issue a certificate.

Section 1(3)(a) delete "has at any time been" – this should not automatically qualify someone for trial without jury

Section 1(3)(b) - delete

and **Section 1(10)** – drop all reference to associates as unduly wide

Section 1 (6), (7) and (8) – needs to include reference to sectarian hostility

Section 7 – it is absolutely unacceptable to remove the right of legal challenge of decisions of the Director of the PPS in relation to the issue of a certificate. The government had in fact promised that the right to judicial review would be available in its consultation paper on the issue.¹ The right to legal challenge, particularly judicial review, is a basic right. Given the wide and undue discretion being placed in the PPS as highlighted above it is absolutely essential that recourse to legal challenge be available.

Human Rights Commission

CAJ has made many submissions to the protracted and unnecessarily delayed review of powers of the NI Human Rights Commission (which are available on request). The long awaited legislative response from government is in our view wholly inadequate.

We have had opportunity to read the response of the NI Human Rights Commission (NIHRC) to these proposals and share their concern that these run the risk of further limiting rather than improving the powers the Commission already has.

In addition, we believe many of the original recommendations made by the NIHRC in 2001 [sic] but subsequently dropped still require a legislative framework, such as those highlighted in the briefing paper submitted by British Irish Rights Watch (BIRW).

As regards the current proposals, as well as endorsing the comments made by NIHRC and BIRW, we draw attention in particular to:

Section 13(2) – proposed (2C) should be dropped as it restricts the Commission to instituting or intervening in judicial review proceedings only

Section 14 - proposed 69(B)(5) should be deleted: as it stands it contains an inherent contradiction in preventing an investigation of “whether an intelligence service has

¹ Para 4.12 of the consultation paper stated that “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.

acted (or is acting) in a way which is incompatible with a person's human rights" – this is the exact remit of a human rights institution and as such cannot and should not be restricted in this way.

Powers

This innocuously titled section in effect moves the provisions from Part VII of the Terrorism Act which applies specifically Northern Ireland, and which the government promised to repeal,² to an alternative legislative source. This is unacceptable. CAJ has always been opposed to emergency legislation and the powers contained therein, but the case for their retention is even less valid now in a period of normalisation and moves to build widespread confidence in policing. In addition bestowing such powers on the army removes the scrutiny offered when they are exercised by police and as such is a retrograde step.

We therefore propose that either the entire section is dropped, or:

The onus of **section 40(1)** be changed to read "The Secretary of State may by order introduce sections 20 – 39." This should be followed by a statutory framework which outlines the conditions which need to be met in order for a state of emergency to be declared that would necessitate such wide-ranging powers being introduced.

Conclusion

CAJ believes that many of the proposals in this Bill are not only a poor attempt at delivering on many of the promises that have been made in recent times that were designed to build public confidence in a more secure and normal Northern Ireland, but that they in fact run the risk of rowing back on many of the positive gains and commitments made in the peace agreement here and subsequent political negotiations. As such this Bill should not be approved without significant amendment, and we will be monitoring its progress accordingly.

² See <http://www.nio.gov.uk/media-detail.htm?newsID=11919> "Secretary of State publishes normalisation plans"