

Steering Committee for Human Rights  
Council of Ministers  
Council of Europe

23 August 2007

Dear Sir/Madam,

**Re: Council of Europe review of the effectiveness of the execution of judgments  
of the European Court of Human Rights**

As you know, the Committee on the Administration of Justice (CAJ) is a non-governmental human rights organisation based in Belfast and affiliated to the International Federation of Human Rights. We were awarded the Council of Europe Human Rights Prize in 1998 for our work to mainstream human rights and equality into the Northern Ireland peace process, and we have been working consistently to uphold the highest standards in the administration of justice in this jurisdiction since 1981. For the purpose of this letter, it is particularly pertinent to note that CAJ acted at the European Court as the legal representatives for the Shanaghan, McShane and Kelly and Ors families ( see “cases concerning the action of the security forces in Northern Ireland: *Shanaghan v UK, Jordan v UK, Kelly & Ors. v UK, McKerr v UK, McShane v UK, Finucane v UK*” – most recent Interim Resolution, CM/REsDH(2007)73, dated 6 June 2007).

Since the successful prosecution of these Northern Ireland cases before the European Court of Human Rights, CAJ has followed closely the implementation of measures by the UK government. As you will be aware, we have intervened on numerous occasions directly with the Committee of Ministers – including submissions in February, May and September of 2005, March, May and October 2006 and February and May 2007. You will also be aware that the Committee of Ministers decided at its most recent meeting to close a number of the general measures relating to these cases. CAJ believes that some of these decisions are ill-advised and will be writing more fully in relation to the Interim Resolution in due course.

However, our attention has been drawn to the fact that a review of the whole process of supervising the execution of judgments is currently underway (your Interim Resolution CM(2007)53 final, dated 7 May 2007 refers). We would like therefore to put forward a number of concerns about the **process** followed by the Committee of Ministers in supervising European Court judgments – most especially, in terms of the role that is assigned families, their legal representatives and non-governmental organisations. It is our hope that an exploration of the experience through the eyes of one interested party may help the Steering Group (or should we have directed these comments in the first place to the Directorate of Human Rights?) to consider whether and how the process could be ameliorated. We draw on the specifics of our own experience and, on occasion, the specifics of the cases, for illustrative purposes only.

## **CAJ's experience of the process of supervision**

1. Despite having been the legal representative of several of the families, CAJ has not been routinely informed in advance of the date of meetings at which the supervision of cases will occur.
2. CAJ has not been asked, by either the Committee of Ministers or the UK government, to submit material of possible relevance to the topics under discussion.
3. Clearly the Committee of Ministers is not in a position to examine in detail all aspects of the judgments and the Interim Resolution at each session, but CAJ has never been informed (by the Council of Europe or the UK government) of the issues most likely to come up for consideration at any particular session.
4. CAJ is not asked to comment on submissions made to the Committee of Ministers by the UK government with a view to providing additional or alternative information that might be helpful in the deliberations of the Committee of Ministers. CAJ does not receive a copy of the UK government's submission until it is printed alongside the determination by the Committee of Ministers.
5. CAJ is not informed officially after the supervision of the determinations.

Needless to say, CAJ's great interest in your work has ensured that we pro-actively check websites regularly and seek to keep ourselves informed of developments, but this ad-hoc system is far from satisfactory, and we give some examples of this below.

We are of course entirely aware that the primary goal of the Committee of Ministers is to ensure that the UK government complies with its duties, and it is clearly impossible to expect the Council of Europe to ensure appropriate communications between a Member State and NGOs, victims or their families. Nevertheless, we also believe that a successful supervision of a Court judgment requires a multi-track approach that would benefit from more transparency and accountability from all concerned. Such an approach would particularly reassure families that their concerns are being treated seriously and that remedies are being secured – both in their individual cases, and in wider policy terms.

It may help clarify some of our concerns around the process, if we indicate what contributions CAJ might have made to your deliberations on the second Interim Resolution, had the opportunity had been accorded us? Again, we draw on this material merely by way of example.

## **Second Interim Resolution CM/ResDH/2007/73**

### **a. Police Ombudsman Review**

The Committee of Ministers, *“noting that the Police Ombudsman is currently conducting a five yearly review of the working of the police complaints system*

*focused on the operation of the legislation governing the operation of the Police Ombudsman's Office", invites the government to provide the Committee with a copy of that report, and of government's response. This comment and recommendation presumably came about on the basis of the information provided by the UK government (see Appendix I) in which it notes "a five yearly review of the working of the police complaints system is currently ongoing. The review focuses on the operation of the legislation governing the operation of the Police Ombudsman's Office. It is a large exercise involving extensive consultation both internally and externally. The review is expected to be completed in Autumn 2007" (emphasis added).*

CAJ believes that the submission from the UK government is problematic both in terms of the remit of the review (which is constrained to a review of the legislation and does not look at the 'working' of the complaints system per se) and the nature of the consultation process (which, in our view, is very far from 'extensive'). Indeed, it is CAJ's understanding that, whilst the Police Ombudsman is content with her consultation process, she has never claimed that it was "a large exercise involving extensive consultation both internally and externally" and she was not consulted by government when it decided to make such claims on her behalf.

For the avoidance of doubt, we are not suggesting that a different conclusion would have necessarily been reached by the Committee of Ministers if they had been made aware of different 'versions' of events by the UK government and the CAJ (or, in some respects, by the Police Ombudsman). We do believe, however, that it is in the interests of all who care about the proper supervision of Court judgments that these differing understandings are known of, and reflected upon as fully as possible, prior to decision making.

#### **b. Giving of reasons for non-prosecution**

The Committee of Ministers has decided to close its examination of this issue.

**CAJ's perspective:** CAJ has long pursued concerns in this area directly with the Public Prosecution Service but we were unaware of the likelihood of the Committee of Ministers moving in this direction at its June session. It was largely coincidental that CAJ chose to emphasise our concerns in this arena in our last submission, so we are concerned that we may not have adequately argued the need for keeping this on your agenda.

You will be aware of the fact that, since the Committee of Ministers decided to close this general measure, the Public Prosecution Service has decided not to proceed to prosecutions in the Pat Finucane case and has, exceptionally, made a public statement to this effect. CAJ notes the fact that the results of the Stevens III investigation into Mr Finucane's murder were issued in April 2003, and were therefore with the PPS's Office (previously the DPP) for more than four years – indeed the long delay is cited as one of the reasons leading to a potential abuse of process and the inability to prosecute. Yet, interestingly perhaps after such a long delay, there was only a two week gap between the Committee of Ministers' decision to close this measure and the issuing of a determination by the PPS in the Finucane case.

We are currently considering whether judicial review of the PPS is an option in this instance, though it seems an extremely unlikely remedy. It was however the existence

of the remedy of judicial review that apparently convinced the Committee of Ministers that no further examination of this general measure was required. We will take the liberty of keeping you informed of developments in this regard.

**c. Individual Measures**

As noted above, CAJ represents the families in three of the six cases under discussion (Shanaghan, Kelly & Ors and McShane).

These families have not been contacted by the government with a view to:

- a. explaining the supervision process
- b. encouraging a discussion of their concerns
- c. exploring what is being done/ or could be done to give effect to the judgments.

The families were all the more upset recently therefore when the Interim Resolution unexpectedly became the subject of confusing and inaccurate media reporting. Nor are families assisted in understanding the process any better even once the government has made its submission to the Committee of Ministers. See, for example, that the government notes that it announced an inquiry into the killing of Pat Finucane on 23 September 2004. Interestingly government does not comment on the fact that, nearly three years later, no such inquiry has been established. The family have frequently noted that they have to actively pursue the government for meetings and information and are never sought out.

If families of victims are ever to get satisfaction, should they not expect the government to make at least minimal efforts to communicate with them about their concerns and to explore how the individual measures might be taken forward?

**Conclusions**

CAJ hopes that the above comments illustrate some of the problems in the scrutiny process for those outside of the State/Committee of Ministers dialogue.

In our view, the Police Ombudsman example highlights a failure on the part of the government to correctly state the facts of the case; the Public Prosecution Service example highlights the difficulty for ‘outsiders’ to make informed contributions when ignorant of the timetable and process for debate in Strasbourg; and the lack of communication around individual measures highlights the fact that victims can be re-traumatised after the Court has determined in their favour.

We believe that the effective supervision of European Court judgments requires a problem-solving approach that can only occur with the wholehearted commitment of all parties involved. CAJ believes that the interested parties are not confined to the Council of Europe and to the State at issue but must, at least, engage with the interests of the individual victims who took the long road to Europe to seek a remedy for the wrongs done to them.

If the many families involved in these cases had not persevered and taken their case to Europe, there would be no dialogue between Strasbourg and the UK about Ombudsman’s reviews, inquest arrangements, police calling-in powers etc.

It is not our intention to suggest that the Committee of Ministers must engage routinely in detailed exchanges with the families and their legal representatives – this would be logistically difficult if not impossible. We do, however, believe that the European institutions have a major role to play in ensuring that States engage in such exchanges.

CAJ also believes that it ought to be possible at the outset of the supervision process to agree on certain basic steps by which those most likely to want to contribute to the supervisory process can engage constructively and helpfully. Despite the important differences, we see useful parallels between the Committee of Ministers' supervision process and the oversight provided by UN Treaty Bodies. It is inconceivable that these latter entities could operate as effectively as they do without frequent engagement with those in a position to complement, or on occasion, contradict the information provided by the state concerned.

Please be assured that it is precisely because of the importance CAJ accords your work that we have had the temerity to comment on how the system might be improved further. We hope that you will take this feedback in the manner intended, and we will pursue more detailed concerns about next steps in the supervision process directly with the Secretariat.

Given the role accorded to the Commissioner for Human Rights in the matter of the execution of ECHR cases, we are taking the liberty of copying this letter to Thomas Hammarberg. We are also copying in the Irish and UK delegations to the Council of Europe and the parliamentary Joint Committee on Human Rights, given the interest of all these bodies in your work and in the review process.

Thanking you for your attention.

Yours sincerely,

Maggie Beirne  
Director

Cc Thomas Hammarberg, Council of Europe Commissioner for Human Rights  
UK and Irish delegations to the Council of Europe  
Northern Ireland Office  
Joint Committee on Human Rights