

## **CAJ's submission no. S400**

CAJ's 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

**November 2012**

### ***What is the CAJ?***

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organization 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 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, Human Rights First (formerly 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, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organization has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**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**

*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*

**November 2012**

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. Its membership is drawn from across the community.

CAJ seeks to secure 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. 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 areas of work include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award, and in 1998 was awarded the Council of Europe Human Rights Prize.

CAJ acted in three of the above cases before the European Court of Human Rights and we seek the urgent attention of the Ministers' Deputies to the above cases as we understand that they have not expressed themselves on this group of Northern Ireland cases since 2009. CAJ is concerned that there are still significant delays, deficiencies and obstruction of the implementation of these judgments. Whilst the Northern Ireland cases may seem less immediate than others, a dangerous precedent is set across the region if a

powerful member state, in this case the UK, is able to thwart the implementation of judgments in right to life cases.

CAJ continues to follow the decisions adopted by the Minister's Deputies at the Human Rights Meetings and are conscious of the significant volume of cases concerning similar violations, including those in the Chechen Republic of the Russian Federation, in respect of which a parallel with Northern Ireland has been made.<sup>1</sup> We are concerned that the failure to effectively implement these judgments in a prompt manner undermines the Council of Europe standards requiring the prompt and effective execution of judgments. We are also conscious that there is a risk of a knock on effect on other Council of Europe member states should the above matters not be addressed.

We remind the Ministers' Deputies of some of our most recent submissions<sup>2</sup> as we note that the Deputies decided to resume consideration of these cases at their 1092<sup>nd</sup> meeting in September 2010 in the light of information to be provided on Individual Measures and information provided on the General Measures.

### **General Measures**

We wish to briefly outline a number of issues in relation to the General Measures established in relation to these cases.

---

<sup>1</sup> CM/Inf/DH(2010)26 27 May 2010 [<https://wcd.coe.int/ViewDoc.jsp?id=1626557&Site=CM>] paragraph 19.

<sup>2</sup>[http://www.caj.org.uk/files/2011/03/11/S296\\_CAJ\\_PFC\\_Submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_February\\_2011.pdf](http://www.caj.org.uk/files/2011/03/11/S296_CAJ_PFC_Submission_to_the_Committee_of_Ministers_February_2011.pdf)  
[http://www.caj.org.uk/files/2011/10/05/S358\\_CAJs\\_and\\_PFCs\\_Joint\\_Submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_August\\_2011.pdf](http://www.caj.org.uk/files/2011/10/05/S358_CAJs_and_PFCs_Joint_Submission_to_the_Committee_of_Ministers_August_2011.pdf)  
[http://www.caj.org.uk/files/2011/10/05/S358A\\_Addendum\\_to\\_CAJs\\_and\\_PFCs\\_Submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_September\\_2011.pdf](http://www.caj.org.uk/files/2011/10/05/S358A_Addendum_to_CAJs_and_PFCs_Submission_to_the_Committee_of_Ministers_September_2011.pdf)  
[http://www.caj.org.uk/files/2011/10/05/S358B\\_Additional\\_Addendum\\_to\\_CAJs\\_and\\_PFCs\\_joint\\_submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_Sept\\_2011.pdf](http://www.caj.org.uk/files/2011/10/05/S358B_Additional_Addendum_to_CAJs_and_PFCs_joint_submission_to_the_Committee_of_Ministers_Sept_2011.pdf)  
[http://www.caj.org.uk/files/2012/02/16/CAJ\\_and\\_PFC\\_Joint\\_Submission\\_to\\_the\\_Committee\\_of\\_Ministers\\_\(February\\_2012\).pdf](http://www.caj.org.uk/files/2012/02/16/CAJ_and_PFC_Joint_Submission_to_the_Committee_of_Ministers_(February_2012).pdf)

### ***Historical Enquiries Team (HET)***

In 2009 the Committee recalled the establishment of the HET with the task of *'providing a thorough and independent reappraisal of unresolved cases, with the aim of identifying and exploring any evidential opportunities that exist, and, if evidential opportunities are identified, to proceed with the investigation of the crime'*. The Committee noted, *inter alia*: the HET process was taking longer than originally anticipated as a result of a high caseload but despite this the HET could bring 'a measure of resolution' to affected persons; that the HET structure consisted of different teams and was staffed by retired and serving police officers including those from outside Northern Ireland and that the HET had transferred a total of 87 cases to the Police Ombudsman. The Committee therefore decided to close its examination of the issue on the grounds that the HET had *'the structure and capacities to allow it to finalise its work'*.<sup>3</sup>

We are, however, concerned that since this assessment was made by the Committee there have been a number of developments which significantly undermine the HET's capacity to carry out the work it was deemed capable of. We have outlined our concerns in detail in our previous submissions, most recently in February 2012.

Our previous submission raised specific concerns about aspects of the HET process in relation to cases where the deaths involved actions by British Army personnel. No effective investigations were carried out at the time of these killings.<sup>4</sup> The original discharge of weapons which resulted in deaths were originally dealt with, not by the main police service – the Royal Ulster Constabulary (RUC), but by the Royal Military Police (RMP). This occurred under an agreement whereby cases involving army personnel suspected of involvement in unlawful killings of civilians were interviewed by the latter and not the former, even where other witnesses' statements were at variance with the accounts given by the soldiers. Initially the HET was unable to trace British soldiers involved in incidents through the UK Ministry of Defence. Subsequently in light of pressure from NGOs, the HET recalled and/or reconsidered 157 of these cases. The HET subsequently developed new

---

<sup>3</sup> Interim Resolution CM/ResDH(2009)44

<sup>4</sup> A domestic Court noted in 2003 that the 'RMP' process did not meet the requirements of Article 2. see *In the Matter of an Application by Mary Louise Thompson for Judicial Review* [2003] NIQB 80 [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2080/j\\_j\\_KER\\_A3639TFinal.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2080/j_j_KER_A3639TFinal.htm) [accessed November 2012].

ways of tracing army personnel. However, exploring evidentiary opportunities appears largely dependent on the 'voluntary' cooperation of military personnel and is governed by a protocol with the Ministry of Defence.<sup>5</sup> In light of the failings of the processes for accountability and for determining whether the soldier's actions were lawful at the time of these incidents, we believe Article 2 is the standard required in these cases.

CAJ gave evidence to the Northern Ireland Policing Board Human Rights and Professional Standards Committee on the 8 March 2012 in relation to our concerns about changes affecting the HET's capacity to undertake effective independent investigations. The Policing Board also heard academic evidence from Dr Patricia Lundy of the University of Ulster at this meeting in relation to new research she had conducted in to the HET's processes and procedures for dealing in RMP cases. The research found apparent anomalies and inconsistencies in the investigation process where the military is involved, compared to historic cases where non-state or paramilitary suspects are involved.<sup>6</sup>

As a result of this a decision was taken to call in the policing inspectorate, HM Inspector of Constabulary (HMIC) to conduct an independent review of the HET's investigative practices in relation to the RMP cases.<sup>7</sup> Whilst it has taken some time for the Terms of Reference for the investigation to be completed between the Policing Board and Police Service for Northern Ireland it appears they are now being finalised and the HMIC inspection will take place shortly.<sup>8</sup>

***In the context of the questions that have been raised, including those which have led to the commissioning of the HMIC investigation CAJ reiterates our request made in our previous submission; namely the reopening of scrutiny by the Committee of Ministers of General Measures relating to the HET in the 'McKerr group of cases'.***

---

<sup>5</sup> Lundy, Patricia (2011) [Paradoxes and Challenges of Transitional Justice at the 'Local' Level: Historical Enquiries in Northern Ireland](#). Contemporary Social Science, 6 (1). pp. 89-106.

<sup>6</sup> Lundy, Patricia (2012) *Research Brief: Assessment of the Historical Enquiries Team (HET) Review Processes and Procedures in Royal Military Police (RMP) Investigation Cases*. None. 12 pp. [Research report (external)] [Available at: <http://eprints.ulster.ac.uk/21809/>]

<sup>7</sup> Northern Ireland Policing Board, Minutes April 2012, item 2.

<sup>8</sup> Northern Ireland Policing Board, Minutes of the Corporate Policy, Planning and Performance Committee, 20 September 2012, Item 3.1.

***Office of the Police Ombudsman for Northern Ireland (OPONI)***

Our previous submissions in August and September 2011 detailed investigative reports into the Police Ombudsman's Office by CAJ, the Department of Justice (the McCusker Report)<sup>9</sup> and the official Criminal Justice Inspector (CJI).<sup>10</sup> The CAJ report in June 2011 was an extensive review of the workings of the Office on historic cases in relation to compliance with the requirements of Article 2 ECHR which was appended to our submission dated August 2011. The report identified numerous concerns, raised questions and made recommendations in relation to the actual and perceived effectiveness, efficiency, transparency and independence of the Office. This report, as with the CJI investigation which followed it, found serious failings and a 'lowering of independence' within the Ombudsman's Office. The CJI report concluded that the way in which investigations of historical cases had been dealt with had led to a lowering of its operational independence and recommended the suspension of most historic investigations until reforms in the Office had taken place. The Police Ombudsman has subsequently resigned and a successor has been appointed and a process of reform initiated. Whilst internal reform is taking place within the Police Ombudsman's office there are concerns the legislative changes needed to improve the running of the office may again be subject to a protracted process or will continue to not be delivered.

The Department of Justice ran a consultation on reforms to the Police Ombudsman's office from March-June 2012 on two matters. The first was a consultation paper which floated a number of suggestions e.g. merging the Police and Prisoner Ombudsman's offices, which seemed far removed from the reforms required to address the issues facing the office.<sup>11</sup> The second and more crucial document put out to consultation was the Police Ombudsman's updated "Statutory Five Year Review" of powers report.<sup>12</sup> This is a review the Police Ombudsman is required by the legislation to conduct every five years

---

<sup>9</sup> McCusker, Tony 'Police Ombudsman Investigation Report', Office of the Minister of Justice, June 2011 (McCusker Report). See: <http://www.dojni.gov.uk/publications/police-ombudsman-investigation-report.pdf>

<sup>10</sup> Criminal Justice Inspector Northern Ireland Report "An Inspection into the independence of the Office of the Police Ombudsman for Northern Ireland" published on 6 September 2011.

<sup>11</sup> Department of Justice Northern Ireland "Future Operation of the Office of the Police Ombudsman for Northern Ireland" March 2012.

<sup>12</sup> Police Ombudsman for Northern Ireland 'Statutory Report: Review under Section 61(4) of the Police (Northern Ireland) Act 1998' 2012.

and report on to the Minister.<sup>13</sup> The Review addresses matters crucial to being able to conduct effective conflict-related investigations such as the present lack of powers to ensure the cooperation of retired police officers in investigations.<sup>14</sup>

In Interim Resolution CM/ResDH(2009)44 scrutiny of the Police Ombudsman as a general measure focused on the original review of powers completed by the first Police Ombudsman in 2007. The Committee noted a consultation had commenced, and inviting the UK to inform the Committee on their position on the Five Year Review, in particular the recommendation on powers to compel retired police officers to appear as witnesses.

What is now known is that very few of the reviews' recommendations were ever implemented and the rejection of the majority of them occurred in controversial circumstances.<sup>15</sup> Furthermore, it was striking that at the time of the March-June 2012 consultation, despite the importance of the powers recommended in the Five Year Review and direct controversy over their previous lack of implementation, the Minister of Justice was still to take a position on whether he proposed to implement the review's recommendations.

Recently the Department of Justice published a summary of responses to the 2012 consultation (which provides analysis of the public response to the consultation proposals). However, the UK's view on the recommendations in the Five Year Review remains unclear. The document states that there will now be further work by the Minister of Justice with the Justice Committee (of

---

<sup>13</sup> Section 61(4) Police (Northern Ireland) Act 1998.

<sup>14</sup> The above document outlines "The Police Ombudsman regularly wishes to interview, as witnesses, officers who have retired, in relation to evidence which they may have relating to an ongoing criminal investigation by the Police Ombudsman, or even in relation to the investigation of the circumstances of serious disciplinary matters. The Police Ombudsman has no power to compel those officers to assist his investigation or provide him with documentation compiled by them during their service and retained by them upon retirement. Most retired officers do assist but some with crucial information do not cooperate. This requirement has been highlighted in a significant way with recent investigations of very serious historic matters where the refusal of retired officers to cooperate damages confidence in the oversight process and policing in general terms." paragraph 10.9.

<sup>15</sup> The Department of Justice's McCusker Report (conclusions, p25) refers to an 'agreement' between the Ombudsman's then senior Director of Investigations and "a middle ranking official of the NIO (Northern Ireland Office) without either the imprimatur of the Ombudsman or the knowledge of the Chief Executive." This led to a very small number of recommendations, which would have strengthened the powers of the Ombudsman's office, being accepted.

the Northern Ireland Assembly<sup>16</sup>) and Police Ombudsman's Office in relation to considering changes to the Office with the 'detailed policy and legislative proposals' to follow for another consultation 'probably in the first half of 2013.'<sup>17</sup>

Although many of the recommendations for legislative change have been around since the first Five Year Review 2007 there is therefore still no clear decision or timetable as to their implementation. The Police Ombudsman's office will therefore continue to have limitations as to its ability to deliver effective investigations into conflict-related cases.

***We call upon the Committee to continue to supervise the Police Ombudsman as a General Measure to ensure its effectiveness in preventing new violations. The Committee may in particular wish to ask the UK to address the implementation of the Five Year Review of powers.***

## **Inquests**

CAJ has become increasingly concerned at the effectiveness of the inquest system, as it is functioning at present, to provide effective investigations in compliance with Article 2 in historic cases.

The inquest into the death of Pearse Jordan (see individual measures below), together with another recent 'legacy inquest' (into the deaths of Martin McCaughey & Dessie Grew 22 years ago) which addressed the use of lethal force by state actors, has identified some serious deficiencies of our coronial system when dealing with these types of inquests.<sup>18</sup> These limitations in our view (cumulatively) prevent this mechanism meeting the requirements of Article 2. Key issues include:

---

<sup>16</sup> The power sharing regional unicameral legislature established further to the Belfast/Good Friday Agreement 1998.

<sup>17</sup> Department of Justice Northern Ireland 'Future operation of the Office of the Police Ombudsman for Northern Ireland: Summary of consultation responses' September 2012. Paragraphs 1.12-13. available at: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/future-police-ombudsman-summary-response-report.pdf> [accessed November 2012].

<sup>18</sup> For an appraisal outlining concerns in relation to the Jordan Inquest see investigative journalist report at: <http://www.thedetail.tv/issues/140/pearse-jordan-verdict/hung-jury-in-jordan-case-raises-new-questions-about-juries-in-troubles-killing-inquests> [accessed November 2012]

- the process of appointing a jury is anonymous and therefore there is inadequate provision for vetting jurors who may have a conflict of interest or potential bias;<sup>19</sup>
- an inquest jury in Northern Ireland, unlike elsewhere, needs to reach a unanimous decision;
- inquests in Northern Ireland cannot issue verdicts of lawful or unlawful killing, which falls short of international standards;
- there are protracted delays and litigation involving the Police (PSNI) and armed forces ministry (MOD) in relation to disclosure to next-of-kin, of material that is submitted to be relevant, such as details of witnesses' involvement in other lethal force incidents which falls within the broader circumstances of the death;
- there are concerns about failures to secure attendance of security force personnel at the hearing; and
- inquests continue to be subject to excessive delays.

There is currently a backlog of these inquests within the coronial system. We understand from the Coroners Service that at present there are currently 33 historic inquests, touching upon 45 deaths, still pending. Given the above and other problems families have been obliged to resort to substantial litigation in relation to inquests.

Also, worryingly the Senior Coroner has recently suddenly ordered a suspension into a broad number of historical inquests into controversial conflict-related deaths. The Senior Coroner queried the authority of the Attorney General for Northern Ireland to have directed that new inquests into these deaths be heard on the grounds they may engage “national security” issues.<sup>20</sup> In a broad sense matters involving “national security”, which is not defined in UK law, are not within the competence of the Northern Ireland devolved bodies but are powers retained by London. The Senior Coroner has reportedly referred the matter to British Government Minister for Northern Ireland (Secretary of State) Teresa Villiers for ‘clarification’. Families of the deceased, except one, have reportedly been refused legal aid, but granted leave to judicially review this decision.<sup>21</sup> Clearly the use by any state of an

---

<sup>19</sup> <http://www.legislation.gov.uk/ukpga/2007/6/section/10>

<sup>20</sup> See BBC News Online report at: <http://www.bbc.co.uk/news/uk-northern-ireland-20340606> [accessed November 2012]. The Attorney General's powers to direct inquests are found in section 14 of the Coroners Act (Northern Ireland) 1959.

<sup>21</sup> See BBC News Online report at: <http://www.bbc.co.uk/news/uk-northern-ireland-20385319> [accessed November 2012].

undefined concept of “national security” to prevent inquests into deaths would have far reaching consequences for Article 2 compliance.

### **Individual Measures**

We note in Interim Resolution CM/ResDH(2009)44 that the Committee decided to pursue the supervision of the execution of the present judgments, until the Committee has satisfied itself that the outstanding general measure as well as all necessary individual measures in the cases of Jordan, Kelly and Ors, McKerr and Shanaghan have been taken and we call on the Committee to continue its supervision of these individual measures.

### ***Kelly and Others***

After a delay of over six years the family received a Review Summary Report from the HET in January 2012. In a meeting with the HET in March 2012 representations were made about the deficiencies of this report and its inability to remedy the violations found by the European Court. Detailed submissions were provided to the HET and, despite repeated requests, eight months later the families have not yet received a substantive response to these. Of particular concern is that the HET has only interviewed one soldier of the 23 soldiers who opened fire during the incident. This has further seriously undermined confidence in the HET investigation which is put forward as a ‘thorough and independent’ re-appraisal of the case with the aim of identifying and exploring any evidentiary opportunities that exist. Given that the ECtHR noted that this case ‘...is a situation, which to borrow the words of the domestic courts, cries out for an explanation’ we are concerned that the HET investigation has not discharged its investigative obligations to address this.

***We ask the Ministers’ Deputies to ask the UK to provide an update on its commitment to effectively investigate the serious concerns raised by the families, which will necessitate interviewing a number of soldiers as well as thorough consideration of all material relating to the planning and control of the military operation which resulted in the loss of life.***

***We also respectfully ask that the Ministers’ Deputies clarify with the UK the exact nature of the relationship between the HET and the MOD. We***

***have requested, but not yet received, copies of any Memoranda of Understanding between them both.***

### ***Shanaghan***

#### **HET**

After engaging with the HET in 2006, the family received a Review Summary Report in late 2010. After giving detailed consideration to the report, correspondence was submitted to the HET in September 2012, outlining a number of unresolved matters in the report, in particular, the failure of the report to address the questions which the HET had asked the family to compile. The family was advised in 2009 that they would receive a draft report which they could review and revert back to the HET on, yet, despite this, recent correspondence from the HET contradicts this stating that report provided is the final report. They also advise that *'it will require considerable time and resources to address the matters raised'*. These are the same issues which the HET were aware of and were supposed to be addressing since the beginning of this process in 2006. It is also worrying to note that this case has now re-entered the HET case lists to be allocated for re-consideration in an unknown time in the future.

***We ask the Ministers' Deputies to seek clarification from the UK on what progress has been made with regard to ensuring that the HET discharges its obligations in a prompt, effective and transparent manner.***

#### **Police Ombudsman**

Representatives of the Police Ombudsman met with the family in May 2012 and advised that an independent Senior Investigating Officer has been appointed to investigate this matter with a report to be provided by June 2013. This commitment has been welcomed by the family and another meeting has been arranged with the Office in November 2012 to familiarise the office with the issues raised in this case. The family has provided, in detail, the list of concerns it has surrounding the death of Patrick for the Police Ombudsman to investigate in accordance with its Article 2 obligations. These included complaints that: the death of Patrick had not been properly investigated by the RUC; his death could have been prevented; he was subject to harassment prior to his killing; there was a failure to properly address the complaints made

before he was killed; there was collusion involved in the failure to protect his right to life; the treatment of Patrick after he was shot was inadequate; there was a failure to make anybody amenable and accountable for his killing.

We have raised with the Police Ombudsman's office the need for it to define and operationalise 'collusion' to ensure that it will effectively investigate this case and allay the suspicions that surround it. Judge Cory advocated a 'reasonably broad' definition of collusion, because of the negative impact of collusion on public confidence. Judge Cory stated:

*'At the outset it should be recognised that members of the public must have confidence in the actions of governmental agencies, particularly those of the police force. There cannot be public confidence in government agencies that are guilty of collusion or connivance in serious crimes. Because of the necessity for public confidence in the police, the definition of collusion must be reasonably broad when it is applied to actions of these agencies. This is to say that police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents or by supplying information to assist others in committing their wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies'.<sup>22</sup>*

***We would ask that the Ministers' Deputies seek confirmation of the action taken by the Police Ombudsman to enable the suspension of historic cases to be rescinded as soon as possible.***

### ***Finucane***

In closing its examination of this case, with respect to the individual measure, the Committee stated that it was:

*'Noting with satisfaction that, as to the possibility of holding a statutory inquiry, the United Kingdom authorities are currently in correspondence with the Finucane family on the basis on which any inquiry would be established;*

---

<sup>22</sup> Paragraph 2.59 Cory Collusion Inquiry Report: Chief Superintendent Breen and Superintendent Buchanan  
2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

*Strongly encouraging the United Kingdom authorities to continue discussions with the applicant on the terms of a possible statutory inquiry*<sup>23</sup>

Despite this and the previous announcement by the UK in 2004 that there would be a public inquiry into the death of Patrick Finucane following the Weston Park Agreement in 2001, the family was advised in October 2011 that this was no longer available and a 'review' of the case would take place instead. Judge Peter Cory, appointed following the Weston Park Agreement, recommended that there be public inquiries into the death of Pat Finucane as well as into the deaths in Northern Ireland of Billy Wright, Robert Hamill and Rosemary Nelson – inquiries into all these deaths have taken place except that of Pat Finucane.

While the UK has indicated that the report of the review into this death will be published in the week of 10 December 2012, serious concerns have been raised about it. As previously advised in our February 2012 submission, Geraldine Finucane has been granted leave to judicially review the UK government's failure to provide an independent, judicial, public inquiry into the murder of Patrick Finucane and this matter is listed for hearing on and we understand that this will be heard in 2013.

### ***McKerr***

There continue to be issues relating to disclosure of information by the PSNI. Although the Coroner ruled that they should be entitled to further disclosure the Chief Constable has indicated that he will not comply with the Coroner's direction.

CAJ is also concerned to note that a number of the police personnel responsible for deciding what information should be disclosed to the next of kin, such as the Stalker Report, which addresses the role of RUC Special Branch in the deaths of Mr McKerr and others, are former RUC Special Branch officers. This raises serious concerns about a conflict of interest and lack of independence in this process. The Senior Coroner requested information about the role that these former officers had in Special Branch

---

<sup>23</sup> Interim Resolution CM/ResDH(2009)44  
2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

however we understand that the Chief Constable has refused to provide the information requested.<sup>24</sup>

### ***Jordan***

CAJ closely observed the inquest into the death of Pearse Jordan which was heard on dates between 24 September and 26 October 2012 and notes with disappointment that a decade after the ECtHR judgment in *Jordan v UK* and two decades since the death, the inquest proceedings did not, in our view, meet the procedural requirements of Article 2.

Although the jury advised the Coroner that they were unable to reach a unanimous verdict, as is required in Northern Ireland, they were pressed to reach one they could agree on. The verdict they reached only addressed who the deceased was, where he died and that he was shot by an RUC officer, and failed to address the broad circumstances of the death, and therefore does not remedy the limitations of the previous inquest system which the ECtHR identified in this case. We understand that the Applicant is seeking to challenge the Coroner's decisions; to have the verdict quashed and to have a new inquest into this death.

***CAJ requests that the various shortcomings we have identified in the investigations into these cases be given serious consideration by the Ministers' Deputies at the 1157<sup>th</sup> meeting.***

**Committee on the Administration of Justice  
November 2012**

---

<sup>24</sup> See investigative journalist report at: <http://www.thedetail.tv/issues/146/psni-reject-coroners-request/psni-rebuffs-coroner-over-special-branchs-handling-of-stalker-report>