



Promoting Justice / Protecting Rights

**Submission no. 435**

**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 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***

**August 2014**

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.

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. This Rule 9 communication is for consideration at the 1208<sup>th</sup> meeting of the Ministers' Deputies. It is to be read in conjunction with our previous submissions on the 'McKerr Group of Cases' which have set out in detail our concerns about the UK's failure to promptly implement these judgments<sup>1</sup>, in particular our most recent submission in May 2014<sup>2</sup>.

CAJ welcomes the Memorandum prepared by the Department for the Execution of Judgments of the ECtHR as set out in Information Document CM/Inf/DH(2014) 16 rev of 27 May 2014.

## **General Measures**

We are not aware of any substantive progress in relation to the general measures addressing the defects as identified by the Ministers' Deputies in May 2014. While we provided submissions to and support the 'Haass proposals', which include the establishment of a single Historical Investigations Unit, in the absence of any political progress we remind the UK

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<sup>1</sup>[CAJ S421 Submission to the Committee of Ministers, September 2013.](#)

<sup>2</sup>[CAJ S431 Submission to the Committee of Ministers, May 2014.docx](#)

government of its obligation to remedy the violations of Article 2 ECHR as identified in the above cases in a prompt manner.

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

As detailed in our previous submission following a damning report by the official HM Inspectorate of Constabulary, which held the HETs approach to state involvement cases was unlawful in reference to Article 2 ECHR, the Northern Ireland Policing Board sought to suspend HET functions. The Policing Board stated at the time in July 2013 that: 'It is the view of the Board that all military case reviews by the HET are suspended. The HET should continue the process of conducting all other reviews but it should not finalise any cases until all the necessary reforms are completed.'<sup>3</sup> In June 2014 the Policing Board confirmed that the implementing of the HMIC recommendations far from being concluded was an 'ongoing process'.<sup>4</sup>

We would draw to the Committee's attention a Freedom of Information request response provided by the Historical Enquiries Team (HET) advising that 'the review work of the HET was not suspended in 2013. Following the publication of the HMIC's report, the work on Military cases was suspended. This amounts to approximately 9% of the entire HET caseload'. The response also advised that 977 cases remain unfinished, including 35 cases which have been reviewed and completed since July 2013 with 410 cases of allocated to review teams and 567 unallocated. An addendum to this response stated that 'Since September 2013, the HET has implemented new policies and procedures in response to the HMIC report. As part of that response, a new format for publishing reports to families was introduced.'<sup>5</sup>

In response to a question on the remit of the HET from the Policing Board Performance Committee in July 2014 the PSNI Chief Constable stated 'In recent weeks the HET have been asked to begin initial inquiries in relation to allegations of serious criminality made against the MRF and the enquiries

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<sup>3</sup> [Northern Ireland Policing Board 'HMIC Report on the Inspection of the PSNI Historical Enquiries Team' Statement of Chair Anne Connolly 4 July 2013.](#)

<sup>4</sup> Correspondence of Jonathon Craig MLA, Chair of Performance Committee NI Policing Board, 19 June 2014.

<sup>5</sup> Freedom of Information Request Number F -2014 -03293, [www.psni.police.uk](http://www.psni.police.uk)

relating to the correspondence recently disclosed touching on the use of torture being allegedly sanctioned by government ministers.’<sup>6</sup>

The above refers respectively to revelations in TV documentaries by the UK and Irish national broadcasters the BBC and RTÉ respectively. In the first former members of a undercover British Army unit, the Military Reaction Force (MRF), made revelations about MRF killings, including of civilians, when the unit was operational from 1971-1973. The second programme covered new evidence from declassified documents which indicated ministerial sanction for a policy of torture carried out largely by the British Army which was subject of the Ireland v UK interstate case before the court.

**We call upon the Ministers’ Deputies to seek clarification on the current remit of the HET in relation to military and other cases, as well as the policies and procedures being adopted by the HET, and the rationale for the new stylisation of its reports. We also call upon the Ministers Deputies to seek clarification from the UK, given the HET has been found not to be ECHR compliant by the inspectorate, which other mechanisms it will use to ensure effective and independent investigations into alleged Article 2 and 3 violations involving the Armed Forces in Northern Ireland.**

**We request that these serious matters be examined in detail by the Ministers’ Deputies in light of the comments in May 2014 which questioned the HET’s capacity to finalise its work.**

### ***Office of the Police Ombudsman for Northern Ireland***

In June 2014 the Police Ombudsman took the unprecedented step of launching legal action against the Police Service of Northern Ireland (PSNI) for failure to disclose documents, including intelligence documents, in cases including relation to major legacy investigations which engage alleged police wrongdoing.

The Police Ombudsman’s office confirmed that investigations into more than 60 deaths ‘have now been stalled by a PSNI refusal to provide certain

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<sup>6</sup> Board Members Questions to Chief Constable – July 2014 Meeting

material'.<sup>7</sup> CAJ is aware this includes at least one of the cases currently under scrutiny for individual measures. This PSNI move was despite the existence of a clear legal authority, under Section 66 of the Police (Northern Ireland) Act 2000, which states the Chief Constable of the PSNI 'shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions'.

It is of significant concern that the Police Ombudsman was required to issue judicial review proceedings against the PSNI for a failure to provide sensitive intelligence material. The Police Ombudsman noted that he was legally entitled to the information, stating:

'The Police Ombudsman's office does not do investigations by negotiation.

'This is fundamental to the independence of the office and the requirement for me to undertake a very clear and robust, independent investigation. In order to be able to do that, I need access to all areas of police activity to allow my investigators to come to a judgement about what happened.

'This gets to the core of independence, it gets to the core of accountability. We cannot have a situation where those who are the subject of investigation will determine what information is given to those who are undertaking that investigation.'<sup>8</sup>

The application for leave to judicially review the PSNI was granted with the Court adjourning the substantive hearing in the anticipation that this matter might be resolved between the parties.

### ***Inquests***

We agree with the Ministers' Deputies that it is of significant concern that inquest proceedings in the Jordan case did not provide an effective investigation and that the inquest proceedings in the McKerr case are still pending.

The judgments in McCaughey and Hemsworth demonstrate the continuing serious nature of delays in legacy cases. We understand that there are now

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<sup>7</sup> [See Police Ombudsman takes legal action against PSNI \*The Detail\* 3 June 2014.](#)

<sup>8</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-27682154>

currently 49 cases involving 78 pending before the Coroners' Courts.<sup>9</sup>We call upon the Ministers' Deputies to seek regular updates on the general measures proposed to improve the efficiency of inquest proceedings include details of the proposed legislative reform.

### **Individual Measures**

We also note that the Committee 'has repeatedly urged the United Kingdom authorities to take all necessary measures with a view to bringing to an end, without further delay the investigations' in the individual measures and we call upon the Committee to continue its close scrutiny of these cases.

### ***Shanaghan***

The next of kin has been recently advised by the Office of the Police Ombudsman that it is unlikely that its investigation will be completed within the original time scales indicated and is more likely to be completed within the first half of 2015.

The next of kin have not received any update from the HET.

### ***Kelly & Ors***

The next of kin have not received any update from the HET on the status of their report.

CAJ wishes to bring to the Committee's attention to a request made to the Attorney General for Northern Ireland by the next of kin under section 14(1) of the Coroners Act (Northern Ireland) 1959 seeking that he exercise his powers to direct a fresh inquest into these deaths.

This application was made in 2012 and a substantive response was received in July 2014 indicating that the Secretary of State for Northern Ireland issued a certificate on 'national security grounds' under section 14(2) of the Coroners Act (Northern Ireland) 1959 transferring the role of the Attorney General under section 14(1) to that of the Advocate General for Northern Ireland (also the Attorney General for England and Wales). We were advised

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<sup>9</sup> Information provided by the Coroner's Service for NI – August 2014

that 'the Attorney General wishes me to inform you that he considers the Secretary of State's decision to be profoundly wrong in principle and is currently reflecting on the appropriate response to it'.

This intervention by the Secretary of State has raised serious concerns and a request has been made for full reasons for the issuing of this certificate. We understand that this is the first occasion in which she has used this power despite the Attorney General for Northern Ireland having issued directions into controversial deaths without a section 14 certificate having been issued.

### ***Jordan***

The Chief Constable and Coroner have lodged an appeal against the decision of the High Court of Mr. Justice Stephens which was delivered on 31 January 2014 quashing the inquest verdict and directing that a fresh inquest be held. The appeal is listed for hearing on 7 October for two to three weeks. The next of kin of Pearse Jordan have also lodged a cross appeal. The Chief Constable is also appealing a decision of Mr. Justice Stephens delivered on 20 May 2014 in which the Court held that the delay by the PSNI in progressing the inquest into the death of Pearse Jordan breached Article 2 ECHR and awarded £7500 for the distress and anxiety caused to the next of kin. This appeal will also be heard in October 2014.

### ***McKerr***

Further disclosure is being provided on an ongoing basis in the inquest proceedings. The PSNI have stated that disclosure should be completed by the end of December 2014. A further preliminary hearing is listed in September 2014.

### ***McCaughey***

In June 2012 an application for leave to apply for judicial review was lodged by the next of kin of Martin McCaughey challenging decisions taken by the Coroner in the inquest into the deaths of Martin McCaughey and Dessie Grew which concluded on 2 May 2012. In October 2012 the High Court granted the next of kin leave to apply for judicial review on a single ground and refused all other grounds of challenge.

On 3 June 2014 the Court of Appeal in Northern Ireland granted the next of kin of Martin McCaughey leave to apply for judicial review on three further grounds of challenge. The next of kin has now lodged an application for permission to appeal to the Supreme Court on additional grounds and a decision on the next of kin's petition is awaited.

***Finucane***

The application for judicial review challenging the refusal to hold a public inquiry is listed for hearing for one week commencing 8 December 2014.