

IHf FOCUS: freedom of expression and the right to privacy; rule of law; torture, ill-treatment and police misconduct; Northern Ireland (accountability for past killings, policing, the judicial system, marching season, use of plastic bullets by security forces, human rights defenders); asylum seekers and immigrants; intolerance and racial discrimination; Sex Offenders Act; rights of the child.

Throughout 2001 there was a steady flow of cases brought under the Human Rights Act (the first complete year since its entry into force in October 2000). Four landmark decisions by the European Court of Human Rights in cases against the UK concerning deaths at the hands of the Northern Ireland security services, gave credence to a legacy of concerns voiced by civil rights organizations concerning the justice and police system in Northern Ireland.

In October the Government proposed a fourth set of changes in Asylum Laws, and in November the proposals for emergency anti-terrorism legislation in response to the 11 September terrorist attacks in the United States aimed to extend the powers of government authorities over access to information on individuals and caused particular controversy over the possibility of violating international legal standards on fair trial.

Other concerns included spouts of inner-city racial violence in the North of England, the deployment of child soldiers in battle and a number of reports of racism within the armed forces.

Freedom of Expression and the Right to Privacy'

Controversy over the right to privacy enshrined in the European Convention on Human Rights (ECHR) followed Lord Justice Sedley's statement in the Michael Douglas-Catherine Zeta-Jones case in December 2000. He said that law would appropriately protect a right of personal privacy. Since then, the year 2001 saw a number of cases by both celebrities and ordinary members of the public claiming a right to privacy from media intrusion under the Human Rights Act. This had a major im-

act on freedom of expression laws (Article 10 of the Act) and judges now must strike a balance between these.

◆ In November, an HIV-positive health-care worker successfully applied for an injunction under the Human Rights Act to prevent the *Mail on Sunday* from publishing any information on him. This followed an injunction to ensure anonymity. His former boss was in the process of compiling a list of those patients with whom he had come into contact. Peter Wright, editor of the *Mail on Sunday* called for a repeal of the Human Rights Act in face of what he felt to be the excessive placing of private interests over the interests of the public at large.

◆ In January the killers of two-year-old James Bulger, Robert Thompson and Jon Venables won a lifetime court order banning the media from publishing their new identities or whereabouts. They were released after serving their eight-year sentences from separate local authority secure units in June. The case was brought by Dame Elizabeth Butler-Sloss under Articles 2 and 3 arguing that revenge attacks may threaten their right to life (Article 2) and freedom from inhuman and degrading treatment (Article 3).

◆ *The Manchester Evening News* was also heavily fined in December for inadvertently publishing information that could have enabled the new identities and whereabouts to be discovered.

◆ On September 28 David Shayler, a former MI5 agent convicted under the Official Secrets Act, failed to persuade the Appeals Court that his disclosures about the misconduct of security and intelligence agencies in 1997 were in the public interest. He argued that the Official Secret's Act was inconsistent

with his freedom of expression under the ECHR. Whilst the relevance of this was ruled out in his case, the Court of Appeal did rule that a "defence of necessity" must be made available under the Official Secrets Act despite the blanket ban on disclosures imposed by the Act. On 1 November Mr Shayler won leave to appeal to the House of Lords. Civil rights organization Liberty, which brought the Shayler case, regarded the decision as the opportunity to "demonstrate that the blanket ban on disclosures is contrary to English common law and violates the right to freedom of expression."

The Information Tribunal (National Security Appeals) in its first ever ruling on 1 October, found that the Government's blanket ban on public access to MI5 files held by the Security Service was unreasonable. Norman Baker MP brought the test case in June to the National Security Data Protection tribunal, arguing against the excessively broad policy of MI5 to neither confirm nor deny the existence of personal files even when national security would not be harmed. This policy was also criticized for the fact that, as a result, MI5 did not even have to make a decision as to whether disclosure would be harmful or not.

Rule of Law

Anti-Terrorism Legislation

On 19 February, the Terrorism Act 2000 came into force. This made permanent the various pieces of existing anti-terrorism legislation and notably gave the Home Secretary the novel power to proscribe (thus making membership illegal) organisations "concerned with terrorism" in the UK or abroad. The provisions have been criticized by various civil rights organisations for the extensive powers given to the authorities and the wide and subjective definition of terrorism (thus carrying with it the possibility of official abuse); the power afforded to the police to issue court orders on journalists to hand over information or reveal their sources (thus potentially com-

promising freedom of expression); the additional emergency legislation only applicable in Northern Ireland which is held to undermine the Multi-Party Agreement of 1998; and the possibility of longer detention periods. Liberty particularly pointed out that "Banning organizations and criminalizing membership is a serious attack on basic rights of free speech and assembly."²

On 13 December, a new Emergency Anti-Terrorism Bill, the Anti-Terrorism, Crime and Security Act was adopted in response to the 11 September terrorist attacks. Human Rights Watch condemned this development as "another step in the U.K.'s retreat from human rights and refugee protection obligations."³ Proposals published by the Home Office a month earlier caused furore amongst national and international civil rights organisations and created tension during parliamentary readings between the Government (notably Home Secretary David Blunkett) and the House of Lords, culminating in a slightly modified final version. The Act brought in a further range of measures additional to the Terrorism Act, permitting the extension of government powers to exchange information on individuals, abolishing certain privacy on the Internet and, most controversially, permitted the detention without trial of non-nationals suspected by the Government of being terrorists. One of the main complaints of civil rights organisations concerns the latter, which affords a potential violation of international human rights law. Clause 23 could permit indefinite detention of suspects without an adequate or effective appeal procedure. Amnesty International (AI) argued that the internment of people on grounds of national security whom the Government does not intend to prosecute and cannot deport violates human rights.⁴ There is to be no explicit judicial scrutiny of the Secretary of State's decisions, which themselves will be based on vague wording within the Act; the definition of "terrorist", which includes those who "support

and assist" terrorists, remains ill-defined despite calls for it to be modified.⁶

Those detained have access to a Special Immigration Appeals Commission (SIAC) but this is not immediate and access to judicial review before a court is limited to questions of law. More importantly, the SIAC was permitted to receive secret information concerning the reasons for detaining the suspect and may hold secret proceedings without the applicant nor his lawyers present. The process, it was argued, could be abused in particular in respect of asylum seekers who may as a result be deprived of individual determinations on the merits of their claim and thus full international refugee protection. Further the measures required derogation under Article 5(1) of the ECHR (the right to a fair trial) and thus entailed the formal declaration of a state of an emergency.

Immediately after adoption, immigration officials and police raided several homes in the UK and placed ten people in detention, in violation of the rights to liberty and fair trial.⁶

Torture, Ill-Treatment and Police Misconduct⁷

An article by Liberty⁸ in May noted an upward trend in the number of deaths in prison custody during the 1990s. The main points of concern regarding both deaths in the custody of prison and police included the absence of any independent effective transparent investigation into the deaths immediately after the event and the frequent problem of overlapping roles (e.g. where police are both suspects and investigators). Article 2 of the Human Rights Act in line with Article 2 of the ECHR requires a full open investigation into deaths at the hands of the State.

AI and Liberty reported several cases of police ill-treatment.

◆ On 20 June, a High Court judge ordered an independent investigation into

the death of Paul Wright, who died on 7 November 1996 due to lack of proper medical care. Liberty brought a case against the Home Office for violation of Articles 2 and 3 of the ECHR for failure to conduct a proper investigation into Mr Wright's death. The information that he had been examined by a doctor who had previously been subject to disciplinary hearings before the General Medical Council and had consequently been conditioned as to how he practiced had importantly not been brought up at the Inquest into Mr Wright's death.⁹

◆ All prosecutions made in the case of James Ashley were dropped in May. Mr Ashley was shot dead in 1998 by firearms officer, Chris Sherwood, in a police raid on suspicion of attempted murder and drug trafficking. Whilst the Police Complaints Authority found that the raid was based on intelligence that was "concocted" with "a plan to deceive" and thus the raid should neither have been sought nor approved, the four officers charged with misfeasance in public office were acquitted due to the impossibility of taking up individual cases given the depth of corporate failure in the force. Sherwood was found not guilty of Ashley's murder as his claim of self-defence could not be disproved.¹⁰

In March the Home Office announced a full-scale review of the Coroner's system that will look at the issues of accountability and investigation.¹¹

Northern Ireland

Accountability for Past Killings

On 4 May, the European Court of Human Rights issued landmark judgments in four cases. The applicants representing 11 people killed by the security forces in Northern Ireland and one person killed by an armed loyalist group with the alleged collusion of security forces, argued i.a. that the UK was in breach of Article 2 of the ECHR (the right to life) for failure to conduct a "thorough and effective" investigation into the deaths due to the lack of in-

dependence of the investigating officers, the absence of public scrutiny and the absence of information provided to the applicants on the decision to prosecute.¹²

In addition the European Court criticized the inquest procedure within Northern Ireland because of the fact that no verdict was allowed; that suspects could be compelled to give evidence at the inquest; delays in the procedure; and the lack of equality of arms between parties due to the non-disclosure of witness statements to the applicants before the proceedings. All applicants were awarded £10,000 (17,000 Euro) in damages. This marked a breakthrough not only in its extension of the requirements on all ECHR State parties under Article 2 but, more fundamentally, for the potential ramifications in the case of Northern Ireland where there is a backlog of pending inquests into similar circumstances using those same procedures. The Strasbourg findings reiterated the main concerns voiced by civil rights organisations since the '80s in their criticism of the Government's inaction to ensure impartial, thorough and immediate investigations into disputed killings by Security Forces. In addition, this case was important in affording publicity and thus legitimacy to a case of alleged collusion. The ruling will require the UK to alter the processes by which killings in disputed circumstances are investigated including the decision-making by the prosecution, investigations into criminal conduct and the inquest system.¹³

As of the end of 2002, the UK response was limited to an offer of a two-year review of the inquest procedure whereby killings in disputed circumstances will be investigated once a decision to prosecute has been made.

Policing

The Pat Finucane Centre was critical of the Government's policing implementation plan which was published by the Secretary of State on 17 August. This outlined the changes to be made to the Royal Ulster

Constabulary (RUC) and aims to bridge the gap between current proposals and the 1999 Patten report¹⁴. The Finucane Centre argued that institutional and cultural factors that had continuously led to violations in the past by the RUC, remained within the system. Factors included i.a. the lack of democratic accountability and that the system did not provide a means by which to inquire into past human rights violations or into human rights abusers within the force.

Marching Season

The advent of the traditional marching season in June saw a revival of clashes between loyalists and nationalists at Catholic/Protestant interfaces in North Belfast, which continued into the autumn. Much of the fighting affected school children and their parents on their way to/from school who were attacked on several occasions by stone throwers and bombs.¹⁵

Use of Plastic Bullets by Security Forces

The Committee on the Administration of Justice (CAJ)¹⁶ expressed its disappointment at the continued use of plastic bullets by the security forces despite UN and NGO recommendations to the contrary. In April, a report by the Steering Group into Plastic Bullets (a group set up by Patten to research into acceptable alternatives to plastic bullets) was published alongside a statement by the Northern Ireland Office that a "safer baton round system" was to be introduced from June. A report in August 2000 by the Government's Defence Scientific Advisory Council advice, however, outlined the continued dangers inherent in so-called "safer plastic bullets". Eight of the new bullets were deployed to quell sectarian rioting in June.¹⁷

On 3 May the European Committee for the Prevention of Torture (CPT) published the report from its delegation's visit to Northern Ireland in November/December 1999. The delegation visited prisons, juvenile justice centres and holding centres and

also consulted with government officials and NGOs. Its report revealed significant evidence of ill-treatment at the point of arrest. One case underlined by the CPT concerned a man held at Castlereagh Holding Centre from 29 October until 3 November 1999. He had filed a complaint with the police alleging physical assault in both his cell and interview room. A video tape from the latter covered the events and showed substantial evidence of ill-treatment. The Government claimed in June 2000 that these allegations had been investigated and rejected. The CPT was particularly sceptical due to the fact that neither the investigating RUC officer nor the Deputy Independent Commissioner for the Holding Centre had requested a viewing of the cassette.

Human Rights Defenders

Despite the call by the UN Special Rapporteur on the Independence of Judges and Lawyers, P. Kumaraswamy, for an independent judicial inquiry into the deaths of Rosemary Nelson and Patrick Finucane, the Government had not taken up the renewed request by the end of the year. No one was charged in connection with the Nelson murder.¹⁸

The trial against William Stobie, the only person charged in connection with the Finucane murder collapsed on 26 November when Lord Chief Justice Carswell found him not guilty of aiding and abetting the murder in the absence of evidence against him. On 12 December, Mr Stobie was shot dead outside his home in North Belfast by armed gunmen. Mr Stobie was a Special Branch police intelligence agent and quartermaster of the former Ulster Defence Association (UDA), the loyalist paramilitary organization which killed Patrick Finucane, a high-profile human rights lawyer in February 1989. Mr Stobie had alleged that the Special Branch had possessed information on the pending killing of Finucane and was in a position to have prevented the murder. Mr Stobie thus represented a

key testimony providing information about potential police collusion in the murder.¹⁹

Intolerance and Racial Discrimination

From late March, ethnic tension in the town of Oldham resulted in a spate of racially motivated riots between white and Asian residents. This was exacerbated by demonstrations in the town by the National Front, with the British National Party gaining its largest number of votes ever in the later general election. In July, race riots also broke out in Bradford when a demonstration against the National Front deteriorated into violence, leaving two people stabbed and over 200 police officers injured. Petrol bombs, bottles and bricks were thrown and businesses looted.²⁰

A Ministerial Order of 23 April was criticized for promoting racism within the immigration service. Immigration offices were given lists of certain ethnic origins that must be more rigorously examined than others. This stigmatised certain people more likely to be illegal immigrants.²¹

Despite the entry into force of the Race Relations (Amendment) Act on 2 April, which extended the scope of domestic anti-discrimination legislation, outlawed racial discrimination by public authorities in carrying out their functions and imposed a general duty upon public bodies to promote racial equality, reports of increased racism were issued.

The 16 June report of the European Commission against Racism and Intolerance (ECRI) on the UK stressed that "problems of xenophobia, racism and discrimination persist" despite legal changes made since the Stephen Lawrence Inquiry where institutional racism had been found to be part of the explanation for the flawed investigation the Metropolitan Police had held into the racist killing of the black teenager. The report particularly highlighted racial prejudice amongst the police force as a continuing concern. ECRI called i.a. for the results of the Lawrence Inquiry to be imple-

mented, including the monitoring of reports on stop and search by the police force.²²

The UN Human Rights Committee published its provisional concluding observations on the 5th periodic report on the UK in October. Its main recommendations included: the establishment of a National Human Rights Commission, the need for a free-standing right to non-discrimination and the inclusion of all of the provisions of the International Covenant on Civil and Political Rights (ICCPR) in UK law. It further expressed its concern over a large number of complaints issued against the police for racist behaviour. The racially motivated rioting during the summer was also an issue of concern.²³

There were continued examples of racism within the prison service.

◆ Early in the year, three London prison officers were arrested when racist literature was found in their possession. This follows on from the Wormwood Scrubs case where in 1998, 27 police officers were prosecuted on charge of racism and assaults on prisoners. Three of those prosecuted were sentenced on 12 September 2001. Human rights activists continued to call for a public judicial inquiry into the alleged pattern of systematic abuse at Wormwood Scrubs, in order primarily to combat abuse elsewhere in the prison system. The recent arrests of prison officers resulted in the launch of a Commission for Racial Equality investigation of three prisons thought to be problematic: Brixton, Feltham Youth Offenders Institute, and Parc.²⁴

◆ A further racial problem within the prison system was experienced in March when a first-time offender Asian teenager was murdered by his cellmate who was well-known to be a violent racist skinhead. The judge in the case spoke of "systematic failures" within the system at Feltham Youth Offenders Institute and ordered an independent investigation into the murder.²⁵

Despite the lack of wholesale monitoring of racial harassment of asylum seekers,

the National Asylum Support Service of the Home Office in November made public statistics on the number of reports made by asylum seekers of racial harassment by local communities and providers of accommodation. These revealed 36 cases of the latter between October 2000 and October 2001 and 861 cases of the former between May 2000 and October 2001.²⁶

In February, a new guide was published by the Association of Chief Police Officers of England and Wales in response to racism towards asylum seekers. This urged police in the UK to challenge adverse media publicity which fuels community violence and to provide a welcoming climate to asylum seekers wishing to report cases of racial harassment.²⁷

Asylum Seekers and Immigrants

In March 2000, the Government opened the Oakington Detention Centre, a fast-track processing centre in Cambridgeshire for asylum applicants.

◆ In September, four Iraqi Kurds brought a case under the Human Rights Act claiming their detention at Oakington without being suspected criminals breached their human right of liberty. The law permitted refugees to be interned for up to 10 days at such centres. Whilst the High Court in September found a breach, this was then overturned by an appeal court. This case formed part of the wider issue of the legality of detaining asylum seekers.

The UK had the highest number of detained refugees within Europe. Evidence collected by the Refugee Council suggested that "the vast majority... are not failed asylum seekers awaiting removal but asylum seekers awaiting initial decisions" and 65% of those recorded were placed in prisons. The Refugee Council called for the immediate implementation of the 1999 Immigration and Asylum Act's bail provisions which permits (Part III) detainees the right to hearings with a presumption of liberty.²⁸

The ECRI country report on the UK most notably criticized the Government for its increasingly restrictive asylum and immigration laws and the fact that a series of overly frequent reforms of the system have added to the "general negative climate" surrounding asylum. In addition the report was critical of the media for its "xenophobic and intolerant coverage" of these issues and of individual politicians for their negative depiction of applicants as threats to the "security, economic stability and social peace" of the UK.²⁹

On 29 October, the Home Secretary announced the new proposals for a fourth reform of asylum laws. These include the phasing out of the disputed voucher system and of the dispersal of claimants into local communities. The new system aims to follow a three-tiered structure of induction (centres for screening and health checks upon arrival), accommodation (full board housing for those awaiting a decision) followed by removal or integration. In addition, each applicant will be issued with an identity smart card. These proposed reforms follow a year of campaigning by civil rights organisations such as Oxfam and the Refugee Council. Whilst the removal of the voucher system was welcomed, the Refugee Council argued that as yet many of the proposals remained to be fleshed out and the facility and effectiveness of their implementation unclear. Specific concerns include the fact that several systems could be operating at one time, risk of abuse by officials of smart card system, problem of initiating dependence, isolation and institutionalism by strengthening accommodation centres.³⁰

In September tension arose when the UK tightened its grip on illegal immigrants entering through the Channel Tunnel after a renewed burst of immigrants attempting to jump fences into the area. Also in the night of 27 December, hundreds of immigrants stormed the tunnel. As of October, the company Eurotunnel will be fined if

people are found illegally to be entering the UK this way. Eurotunnel officials reacted by attempting to close the Red Cross centre in Sangatte, France (one mile from the tunnel) where most of the immigrants attempting to enter the UK are housed.³¹

Sex Offenders Act

After the intensified public concern of the dangers posed by sex offenders following the death of eight-year-old Sarah Payne in 2000, the Government responded by reviewing both the Sex Offenders Register and the penalties for sexual offences. In June, new measures under the Criminal Justice and Court Services Act were implemented to strengthen the power of the police regarding sex offenders. On 30 July, the Home Office published its proposals on strengthening the Sex Offenders Act for public consultation. This aimed to have a three-fold effect: the range of offences that require registration on the Sex Offenders Register would be widened; the operation of the Sex Offender's Register strengthened; and the number of offenders convicted of indecent assault on the Register would be increased. Further, police would be permitted to apply to a Magistrate's Court for an order to register as a sex offender.³²

The proposals also called for opinions on the manner of application of the Act to young offenders. On 14 May a 13-year-old boy was put on the Register for two and a half years for possession of over 300 paedophilic images on his computer. He was the second youngest person to be registered. He was caught during one of a series of raids investigating the distribution of obscene material over the Internet.³³

The report into the murder in 1998 of an 11-year-old by paedophile D. McKilligan, only months after his release from secure accommodation, called for a national strategy to ensure juvenile sex offenders around the country undergo consistently adequate treatment and care arrangements.³⁴

Dispute arose in March concerning the December 2000 Youth Justice and Criminal Evidence Act. This law aimed to protect victims in rape trials from having their sexual history made public and scrutinized. It was felt that judges had previously failed to exert adequate control over information and that knowledge of the sexual history of the victim could often be abused to the detriment of the victim by e.g. humiliation tactics during cross-examination. Defendant A. accused of rape, however, argued that this undermined his right to a fair trial under the Human Rights Act, by prohibiting him from using evidence that would display that the complainant had willingly had sex the week before. The matter was brought before the Law Lords who read the law so as to make it compatible with the ECHR, ruling that the ban on hearing such evidence breached the right to a fair trial of the defendant. The discretion on the use according to relevance was thus restored to the judges.³⁵

Rights of the Child³⁶

AI lamented the fact that the UK continued to deploy under 18s in armed conflict and refused to raise the minimum age of this as well as recruitment to 18 years of age.

In late 2001, 12 under-18s from the UK armed forces were serving with NATO forces in the Balkans and one 17-year-old youth on a navy warship near Afghanistan.

In 2001, the UK was the only country in Europe to send under 18s routinely into battle. In September 2000 the UK signed the Optional Protocol I On the Involvement of Children in Armed Conflict to the UN Convention on the Rights of the Child,

but had not ratified it as of the end of 2001. The Protocol requires States to i.a. "take all feasible measures" to ensure that under 18s do not take a direct part in hostilities" (Article 1). Further, the UK Government made an interpretative declaration upon signature which, according to AI, rebuts the object and purpose of the Protocol itself. The declaration permits deployment of under 18s in armed hostilities in certain circumstances where there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; by reason of the nature and urgency of the situation; when it is not practicable to withdraw such persons before deployment; or to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and /or the safety of other personnel.

The statutory review of the Armed Forces Legislation within the House of Commons in early 2001 failed to address both the Optional Protocol and the deployment of under-18s. In 2001, the UK had the highest recruitment quota of under-18s in Europe and expensive recruitment campaigns continued to be promoted.

Many cases of mistreatment and deaths amongst under 18s in the armed forces have been reported during the last few years.

◆ The inquest held on 6 January 2001 into the death of a 17- year-old Royal Marine killed on 31 March 2000 during a training exercise involving live ammunition resulted in a verdict of "accidental death". The exercise was supposed to have used only blank bullets.

Endnotes

¹ Based on the articles in the *Guardian* on 21 December 2000, 9 January, 2 October, 2 and 19 November and 5 December 2001.

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- ⁶ AI, "United Kingdom: Concern over Anti-terrorist Arrests", 19 December 2001, at <http://web.amnesty.org/ai.nsf/Index/EUR450282001?OpenDocument&of=COUNTRIES\UK>
- ⁷ See also Northern Ireland: Use of Plastic Bullets.
- ⁸ Liberty, *Deaths in Custody*, May 2001, at www.liberty-human-rights.org.uk/mlett1m.html
- ⁹ Liberty, Paul Wright, *Death in Custody: Judge Orders Investigation*, 20 June 2001, at www.liberty-human-rights.org.uk/mpress46.html
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- ¹² *Hugh Jordan v UK* (No.24746/94); *McKerr v UK* (No. 28883/95); *Kelly and others v UK* (No. 30054/96); *Shanagan v UK* (no. 37715/97). For full text of judgments, see www.coe.int
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- ¹⁹ AI "Inquiry Needed into Stobie Murder", 12 December 2001, at www.amnesty.org/ai.nsf/EUR450262001
- ²⁰ Various articles from www.guardian.co.uk website, including www.guardian.co.uk/racism/story/0,2763,527962,00
- ²¹ www.homeoffice.gov.uk
- ²² European Commission against Racism and Intolerance (ECRI). For full report, see www.ecri.coe.int/en/08101/40102.htm
- ²³ For full report, see [www.uhchr.ch/tbs/doc/nsf/\(Symbol\)/CCPR.C.UK.99.5.En?OpenDocument](http://www.uhchr.ch/tbs/doc/nsf/(Symbol)/CCPR.C.UK.99.5.En?OpenDocument)
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