**IN THE HOUSE OF LORDS**

**ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

**IN THE MATTER OF AN APPLICATION BY THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF DECISIONS MADE BY THE CORONER FOR THE DISTRICT OF FERMANAGH AND TYRONE ON OR ABOUT 27 SEPTEMBER 2000**

**BETWEEN:**
**THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION**
**Petitioner**

**And**

**HER MAJESTY'S CORONER for GREATER BELFAST**
**Sitting as**
**HER MAJESTY'S CORONER for the DISTRICT OF FERMANAGH AND TYRONE**
**Respondent**

# WRITTEN SUBMISSIONS OF AMNESTY INTERNATIONAL, BRITISH IRISH RIGHTS WATCH AND THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

# Contents

## *Introduction*

1. This intervention is made on behalf of Amnesty International, British Irish Rights Watch and the Committee on the Administration of Justice ("the intervenors").

2. The intervention is divided into four parts. The first is an analysis of the Principles relating to the status of national institutions or "Paris Principles" and the extent to which the powers and functions of the Northern Ireland Human Rights Commission ("the Commission"), particularly those at issue in this appeal, comply with the Principles.

3. Secondly, we examine other principles and recommendations by international governmental and non-governmental organizations relating to the powers and functions of national human rights institutions.

4. Thirdly we examine the position of the Commission vis-a-vis its counterpart in the Irish Republic. Finally we consider the position of non-governmental organisations in terms of intervening before the Courts.

5. We are aware of and support the central arguments raised by the Commission in the appeal but this intervention is restricted to the issues outlined above.

## *The Paris Principles*

6. The Principles relating to the status of national institutions or "Paris Principles" were developed at a UN sponsored meeting of representatives of national institutions in Paris in 1991. The Principles were subsequently endorsed by the UN Commission on Human Rights in March 1992 (resolution 1992/54) and the General Assembly in its resolution A/RES/48/134 of 20th December 1993. We attach a copy of the Principles to this submission.

7. While we clearly recognise that the Principles are not incorporated into our domestic law, nevertheless they are endorsed by the international community and are widely accepted as the essential benchmarks for effective national human rights institutions and may be helpful for the Court in determining its response to the issue at the heart of this appeal. In the opening of the text of the relevant resolution of the General Assembly Member States are encouraged to "establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights". In addition the Prime Minister has confirmed in correspondence with United Nations High Commissioner for Human Rights that the Paris Principles "provided a very useful model" and "assisted greatly" in the preparation of the legislative basis for the Commission (correspondence attached).

8. The Principles are designed to provide guidance to governments and others as to the powers and functions which should be accorded to a national human rights institution. We are also aware that the Commission uses the Principles to inform and evaluate its work. The Principles envisage such institutions being given broad mandates and powers commensurate with the importance of the role they play within society.

9. Principle 1 states that "[A] national institution shall be vested with competence to protect and promote human rights."

10. Principle 2 states that national human rights institutions "shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence."

11. We believe that the application of these principles to the issue at appeal before this Court would clearly result in any ambiguity in the terms of section 69 of the Northern Ireland Act being resolved in the petitioner's favour.

12. Principle 3 specifies some of the responsibilities of a national human rights institution. 3 (a) states that the institution shall "submit to the government, parliament and *any other competent body*, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights" (emphasis added).

13. Principle 3 (a) limits the areas where the national human rights institution shall intervene in this way to four, which are listed at 3 (a) (i) – (iv). In the view of the intervenors, the key area of relevance in this appeal is at 3 (a) (ii) which relates to "[A]ny situation of violation of human rights which it decides to take up."

14. The attempt by the Commission to intervene in the Omagh inquest to assist the Coroner in ensuring that the inquest was conducted in accordance with the relevant international human rights standards, and in particular Article 2 of the European Convention on Human Rights, fell, in our view squarely within the parameters of the Principle 3 (a).

15. In addition Principle 3 (b) places responsibility on the national human rights institutions to "promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation". Given that the Commission's purpose in intervening in the Omagh inquest was, as we have already indicated, in order to ensure that the hearing was held in accordance with the procedural aspect of article 2 of the European Convention on Human Rights (McCann, Farrell & Savage v UK 17/1994/464/545 27th September 1995, Kaya v Turkey 158/1996/777/978, 19th February 1998), we again are of the view that the Commission's actions in this regard were properly fulfilling the responsibilities placed on it by the Paris Principles.

## *The Commonwealth Principles on Best Practice for National Human Rights Institutions*

16. Further principles developing the Paris Principles were drafted by an expert group of the Commonwealth Secretariat following a meeting of representatives from 41 Commonwealth countries and national human rights institutions in Cambridge in July 2000. This meeting of Commonwealth delegates "affirmed the Paris Principles and during the meeting sought to build on the Paris Principles and to articulate detailed and updated standards for the creation and operation of national human rights institutions in member countries" [p5, National Human Rights Institutions, Best Practice, published by the Commonwealth Secretariat 2001.]

17. While, as in the Paris Principles, the basic idea that national human rights institutions should be independent is emphasised throughout, in the Commonwealth Principles, special emphasis is also placed on the importance of creating effective relationships between national human rights institutions and other institutions, notably, parliament, the executive, and the courts: thus recognizing that national human rights institutions can best improve the human rights situation within a country by helping other institutions incorporate human rights principles into their work.

18. The Commonwealth Principles emphasise that the national human rights institution's role should be complementary to the role of the courts (Principle 4.4). Principle 4.4. details appropriate division of labour between the national human rights institution and the courts, for example: that the decisions of national human rights institutions should be enforced through the courts; national human rights institutions should refer appropriate matters for prosecution to the courts; national human rights institutions should provide assistance to individuals seeking to redress grievances before the courts; national human rights institutions should not commence matters already pending before the courts unless required by their duty to investigate systemic issues relating to equal protection before the law and access to justice; national human rights institutions should be accorded standing to bring complaints to court in their own right.

19. The Commonwealth Principles also state that "Courts should accord NHRIs [national human rights institutions] official status as a friend of the court."

20. The intervenors submit that the Commonwealth Principles, like the Paris Principles, emphasise the role of the national human rights institution in assisting the courts in

integrating human rights issues into the ordinary functioning of the court, through assistance to complainants, provision of information and advice. The possibility of providing advice to the courts on human rights issues through *amicus curiae* or third party interventions is a key part of this assistance role.

21. Given that the UK is a key member of the Commonwealth, and the Commonwealth Principles, although not binding, are persuasive of best practice internationally, we submit that it cannot have been the intention of Parliament, particularly given what was said during the relevant debates, to exclude the possibility of the Northern Ireland Human Rights Commission submitting third party interventions to the courts on matters within its expertise.

## *Recommendations by Amnesty International on national human rights institutions*

22. In 2001, Amnesty International published "National human rights institutions: Amnesty International's recommendations for effective protection and promotion of human rights" (AI Index IOR 40/007/2001). The recommendations were distilled from reports from Amnesty International staff working on countries in all regions of the world where national human rights institutions were operating, particularly their assessment of the practical operation and effectiveness of national human rights institutions. In the majority of examples which were assessed while formulating these recommendations, the ability to present *amicus curiae* briefs or third party submissions was a normal function of the national human rights institution. On that basis, the following recommendation was included:

23. *"NHRIs [national human rights institutions] must also have the legal power to submit advice to the courts, such as amicus curiae briefs or third party interventions, on legal issues within its field of expertise in an independent capacity, without being party to the case. This is important to ensure that the courts are informed about specialized human rights law concerns and to ensure that human rights standards are actively implemented in court decisions."* [p10, National human rights institutions: Amnesty International's recommendations for effective protection and promotion of human rights" (AI Index IOR 40/007/2001)]

## *The position of the Northern Ireland Human Rights Commission vis a vis the Irish Human Rights Commission*

24. We understand the Petitioner has made the argument that the Northern Ireland Act should be interpreted in light of the relevant provisions of the Good Friday Agreement given that the long title of the 1998 Act is "An Act to make new provision for the government of Northern Ireland for the purpose of implementing the agreement reached at multi-party talks on Northern Ireland set out in Command Paper 3883."

25. The establishment of the Commission was envisaged in paragraph 5 of the chapter of the Agreement entitled "Rights, Safeguards and Equality of Opportunity". Paragraph 9 of that chapter outlines the comparable steps which the Irish government committed to take within its jurisdiction. One of the these steps is the establishment of a Human Rights Commission "with a mandate and remit equivalent to that within Northern Ireland".

26. The Irish Human Rights Commission was established by the Human Rights Commission Act 2000, passed by Dail Eireann. Section 8 of that Act outlines the functions of the Commission. Section 8 (h) gives the Commission expressly the power to

> "apply to the High Court of the Supreme Court for liberty to appear before the High Court or the Supreme Court, as the case may be, as amicus curiae in proceedings before that court that involve or are concerned with the human rights of any person and to appear as such an amicus curiae on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion),"

27. While the provision above relates to the higher courts, it is a clear indication that the two governments envisaged both Commissions having the ability to intervene in proceedings where appropriate and where granted leave by the relevant courts.

## *The position of the Commission v NGOs*

28. We have already discussed the Paris Principles and the extent to which they illustrate the importance the international human rights community attaches to the creation of strong and independent national human rights institutions.

29. It is also clear that the government itself attached significance to the creation of the Commission and also envisaged it playing a key role in protecting human rights in Northern Ireland. When announcing the appointment of the members of the Human Rights Commission on the 1st March 1999 the then Secretary of State for Northern Ireland, Dr Mo Mowlam MP, said: "The Commission will play a key role in ensuring that the development and protection of human rights remains at the heart of the new system of government in Northern Ireland."

30. Given this combination of international and domestic expectation of the role the Commission was to play, the suggestion that Parliament did not intend, through section 69 of the Northern Ireland Act, to allow the Commission the power to intervene in cases before the courts does not appear persuasive. The effect of the judgements of the High Court and Court of Appeal in Northern Ireland have effectively relegated the Commission to a status less than that enjoyed by non-governmental organisations in terms of the ability to seek leave to make interventions before the Court.

31. Our position, as illustrated by the intervention of Amnesty International in the Pinochet case and indeed our intervention in this appeal, is that we may intervene, in writing or orally, with the leave of the court. The interpretation of section 69 of the Northern Ireland Act by the High Court and the majority of the Court of Appeal in Northern Ireland means that the Commission cannot intervene even where a court was minded to accept such an intervention. It cannot have been Parliament's intention to allow such an anomalous situation to develop.

32. Your petitioners respectfully submit that this appeal should be allowed because:

33. The relevant international human rights principles (the Paris Principles and the Commonwealth Principles) to which the government is committed, favour an expansive interpretation of the mandate of national human rights institutions, not the narrow restrictive interpretation favoured by the majority of the Northern Ireland Court of Appeal in this case.

34. The reasoning of the majority of the Court of Appeal, if followed, would lead to the appellant Commission being in a disadvantaged position in terms of having the power to apply to intervene in legal proceedings, compared to the Irish Human Rights Commission which is also a creature of the Good Friday Agreement.

35. The reasoning of the majority of the Court of Appeal, if followed, would lead to the appellant Commission being in a disadvantaged position in terms of having the power to apply to intervene in legal proceedings, compared to non-governmental organizations, like your petitioners.

Paul Mageean

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