

***The impact of the Human Rights Act in practice in an Irish legal context.*** Remarks on a Report on the Potential Effects of the Repeal of the Human Rights Act 1998 by the British Government.

**Westminster – Tuesday 17th May 2016**

**NIALL MURPHY KRW LAW LLP/DOUGHTY STREET CHAMBERS**

KRW LAW LLP and Doughty Street Chambers were commissioned to produce this Report on the potential effects of the repeal of the Human Rights Act 1998 by the British government.

It is, as it was written by lawyers, a legal opinion but we hope that it will have a use value beyond an audience of lawyers and will contribute to the debate regarding both its subject matter – the repeal of the HRA98 – and the wider debate recently set upon us: the UK membership of the EU. The two issues must now been seen as joined and from our perspective – in our jurisdiction – to be resisted.

It should be recalled that there is an honourable tradition of Irish lawyers using the European Convention on Human Rights before the HRA98, a tradition exemplified by the life, work and death of Patrick Finucane. Basically, we were using the Convention and the Strasbourg court to protect the fundamental rights of those whose same rights were being violated by the British government during the Conflict. We are used to this type of fight.

This report provides a strong independent legal analysis as to risks inherent in the Leave Europe campaign to our local human rights architecture, and let me be very clear, a successful Brexit campaign will undermine the Good Friday Agreement.

The Agreement, in addition to being overwhelmingly approved by referendum, in Ireland North and South, was also incorporated as a treaty between the UK and Ireland and lodged with the United Nations. Article 2 of the treaty binds the UK to implement provisions of the annexed Multi-Party Agreement which correspond to its competency.

Indeed paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states:

*“The British Government* ***will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR),*** *with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.”*

This commitment was given legislative effect through the Human Rights Act 1998. The ECHR was regarded as so important that the Agreement also committed the Irish Government to incorporate the ECHR under the “equivalence” provisions.

**This BREXIT campaign is a full frontal assault on our Peace Agreement, as is a repeal of the Human Rights Act.**

However, what we are clear about as human rights lawyers representing and assisting a significant number of victims of the human rights violations suffered during the Conflict, is that the British Government cannot avoid its extant obligations, by which we mean its legal, political and moral obligations to these victims - no matter what rhetorical spin it wishes to put in terms of *specious lawyering constructing a pernicious counter-narrative* as recently articulated by the Secretary of State in a clear intent to shift responsibility of the past in the North

I would however like to address how the removal of access to Convention rights will affect citizens at home on a tangible day to day basis.

In so many of the cases we bring to the courts through both public and private law challenges – in the absence of a state sponsored human rights compliant mechanism such as the HIU – it is Article 2 of the ECHR that is core – the right to life and the obligations on the State to protect the right to life and to investigate violations of it when State agents were responsible for its breach or could have prevented it.

Repeal of the HRA98 or withdrawal from the EU will not remove the obligations on the State toward the families of

* Stan Carberry, shot dead by the British army in 1971 and failed by the HET
* Constable Harry Beckett, shot dead by the IRA in 1990, and failed by the RUC
* the McGurk’s Bar Bombing, 1972 failed by the HET,
* the Birmingham pub bombings in 1974, failed by West Midlands police
* for the victims of the Glenanne Gang failed by the HET
* for the victims of the Loughinisland atrocity, in 1994 failed by the RUC
* for the families of the Dublin/Monaghan Bombings 1974 and the stench of collusion … that pernicious counter-narrative.

I would like to expand on some practical examples from that sad list

**The Glenanne Gang and the family of Patrick Barnard**

Patrick Barnard aged 13, was one of four people who died in a bomb at the Hillcrest Bar in Dungannon, Co Tyrone in March 1976. The Glenanne gang are responsible for 120 murders, all forensically detailed in the exceptional book by Ann Cadwallader, *Lethal Allies*.

The murder gang - which was based at a farm in Glenanne, Co Armagh- contained members of the Royal Ulster Constabulary, Ulster Defence Regiment and British Army.

Our judicial review seeks to challenge how police investigated the activities of the Glenanne gang during the 1970s and leave has been granted at the High Court in Belfast claiming a collective failure in conducting thematic inquiries through the Historical Enquiries Team (HET).

The HET during their investigations were able to link these murders and started a process of completing a thematic report into the murders however with the HET now effectively shut down, Patrick Barnard’s brother, Edward Barnard, wants a court order compelling police to complete a thematic investigation and publish the findings.

This is right, under a duty compelled on the State under Article 2 of the Convention, that his family receive an independent fair and effect investigation. This Article 2 duty is not fully discharged and this right would be denied to Mr Barnard in the event of Brexit.

**Constable Harry Beckett, and an RUC colleague, were shot dead by the IRA in Belfast City Centre in 1990.**

Constable Beckett’s daughter Kathryn Johnston instructed our practice last year to pursue civil litigation against the Chief Constable, invoking her civil rights as underpinned by the ECHR, when it became apparent that the weapon that had been used to murder her father, had been under the safe custody and control of the RUC, before returned to the IRA, who then used the weapon to murder the two police men. This grotesque fact, was reported on in a BBC documentary broadcast last year, when the nefarious activities of a shadowy unit of RUC Special Branch was exposed. WERC, the Weapons and Explosives Research Centre, were a division of Special Branch, who retained primacy over exhibits, the most crucial issue for the integrity of the criminal justice and trial process, prior to these key exhibits being submitted for forensic testing at the forensic lab! The revelations estimated by Police Ombudsman to be close to 60 murder, suggest that Special Branch provided false information to investigators with regards to ballistics histories, to suit their over-arching intelligence agenda. Baroness Nuala O’Loan was definitive in her remarks on the issue, when she stated

*“Terrorism was not defeated by organisations like WERC. The question is to what extent was terrorism enabled”*

Again, the responsibilities imposed on the State, by virtue of article 2, would be denied to Ms Johnstone in the event of a repeal of the Human Rights Act.

**The Loughinisland Atrocity.**

6 men were murdered in June 1994, including Barney Green aged 87, the oldest victim of the conflict, in a rural county Down pub, whilst they watched Ireland play in the World Cup against Italy in New York. It was the most successful sports event in Irish history to that date. Gunmen burst in and raked the bar with 29 bullets from a VZ58 automatic rifle, which the next of kin suspect was imported to Ireland by the British Ministry of Defence. Despite complaining to the Police Ombudsman about their concerns in 2004, no report was published until 2011, and on the topic of the arms importation, the report glibly stated ‘*the Police Ombudsman has no legislative remit to investigate complaints made about alleged military agents’*.

The families successfully challenged the report by way of Judicial Review, citing the investigative obligations on the State under article 2, and had same quashed by the High Court in Belfast in December 2013. A new report will be published by a new Police Ombudsman in 3 weeks time, in early June, which we understand will be an exceptionally significant commentary on the failure of policing in the 1990’s which rather than cauterising the conflict, exacerbated and prolonged it. Whereas the report will be 12 years after the families lodged their complaint and 22 years after the atrocity, as we have seen and been inspired by the Hillsborough families, the truth will out, always.

***Access to Justice cannot be permitted to be inhibited by the repeal of the Human Rights Act.***

**The Birmingham Pub Bombings 1974**

It is appropriate to use a sad example from Britain. The Birmingham Pub Bombings 1974 which killed 21 people including the loved ones of five families we represent. These families came to Iawyers in Belfast – and due to the restraints of the present legal aid arrangements – we are acting pro bono, for our expertise and assistance in their fight to obtain truth, justice and accountability.

The families of the 21 victims are out-with any arrangements, no matter how unsatisfactory, to those in Ireland. They have not received any support or been part of any investigation – save by their own volition – for 42 years – following the wrongful conviction of the Birmingham 6. Therefore there was never an inquest. The hearing taking place in Solihull are an application made to the Senior Coroner to resume those inquests – her decision is due on 1 June 2016.

A human rights compliant inquiry into the Birmingham Pub Bombings 1974 – independent of the stained investigations of the West Midlands Police – would be able to examine the surrounding circumstances of the bombings – including fore knowledge and preventability. The Senior Coroner needs the courage to offer the victims in Birmingham – and the community of Birmingham – (similar to Hillsborough) – hope founded on rights.

***CONCLUSIONS***

The proposed repeal of the Human Rights Act 1998 is a retrograde step of cataclysmic proportions, not only for those seeking truth recovery and accountability in accordance with Article 2 of the Convention but for all those concerned with open government and accountability.

It should be recalled that the Convention was drafted by British lawyers, some of whom prosecuted at the Nuremburg Trials, determined to spare Europe from the horrors of communism and fascism. Indeed one of the draftsmen of the Convention was David Maxwell Fyfe who was also a Conservative politician. When he worked on the European convention in the late 1940s, he and other European conservatives disposed of early drafts that mentioned the rights of workers, nor does it mention shelter or free education and healthcare. It is not a radical left wing, liberal document.

In a celebrated speech in 2009[[1]](#footnote-1), the late Lord Bingham listed the liberties the European convention protects.

* The right not to be tortured or enslaved.
* The right to liberty and security of the person.
* The right to marry.
* The right to a fair trial.
* Freedom of thought, conscience and religion.
* Freedom of expression.
* Freedom of assembly and association.

*“Which of these rights, I ask, would we wish to discard? Are any of them trivial, superfluous, unnecessary? Are any them un-British?”*

It has been observed that such a step would set the clock back 50 years[[2]](#footnote-2), and one can only consider the wolfish delight with which Russia, Turkey, Hungary and other authoritarian states will greet a repeal of the Human Rights Act. They will say that if Britain no longer enforces the European convention, why should they?

We hope that this Report will serve to inform the need to protect our rights, to protect the peace and to deliver truth, justice and accountability for the victims of our Conflict which shapes are present and determines our future – and would be in remembrance of the lost life of Patrick Barnard, aged 13 to Barney Green aged 87 and all the other victims of the Conflict.

1. <http://www.theguardian.com/commentisfree/2014/oct/04/tory-wreckers-out-destroy-human-rights> [↑](#footnote-ref-1)
2. [www.theguardian.com/law/2014/oct/03/tory-plans-european-human-rights-convention-take-uk-back-50-years](http://www.theguardian.com/law/2014/oct/03/tory-plans-european-human-rights-convention-take-uk-back-50-years) [↑](#footnote-ref-2)