

Northern Ireland

Northern Ireland Human Rights Commission

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Northern Ireland NHRI was reaccredited with A status in May 2016. First, the SCA noted the NHRI's concerns on the limitation of its mandate with regards to its monitoring and investigative functions. Second, the SCA encouraged the NHRI to continue advocating for the formalization of an open, broad and transparent selection and appointment process, the appointment of full-time members with an appropriate term of office, as well as the explicit power to table and promote action on reports directly in the legislature.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In 2009/10, the NIHRC's cash budget was £1,702,000. The Commission's grant-in-aid budget for 2018/19 was £1,099,000 and this is decreased by a further £25,000 in 2019/20, when the budget is planned to be £1,074,000. The NIHRC continues to negotiate with the UK Government to enhance its budget to a level that meets its needs.

In June 2018, a judgment by the UK Supreme Court resulted in the NIHRC losing the ability to take a case of public interest in its own name (the judgement was delivered in the matter of an application by the NI Human Rights Commission for Judicial Review (NI) Reference by the Court of Appeal in NI pursuant to Paragraph 33 of Schedule 10 to the NI Act 1998 (Abortion) [2018] UKSC 27). This meant that the NIHRC could no longer lead the charge, but was limited to supporting a human rights case taken by an individual victim.

The NIHRC viewed the ability to take a case in its own name, without the need to rely on a victim, as an important part of its function to bring proceedings involving laws or practice relating to the protection of human rights. Additionally, it provided a safeguard for any known or potential victims – that their issue would be challenged in the public interest without the need to put them through immeasurable personal stress or exposure that can result from the legal process.

The NIHRC was politically supported in its views and, consequently, the required amendment to sections 71(2B) and 71(2C) of the Northern Ireland Act 1998 was included within Schedule 3 of the European Union (Withdrawal Agreement) Act 2020.

Functioning of justice systems

The Justice and Security (NI) Act 2007 makes provision for non-jury trials in NI. The provisions relating to non-jury trials are temporary and must be renewed every two years by way of an order approved in both Houses of Parliament for a period of two years. The relevant provisions have been extended on six occasions since their establishment in 2007. In 2019, the Secretary of State for NI, noting that the UK Government continued to assess the threat level from NI related terrorism in NI to be severe, once again extended the provisions until 31st July 2021.

Prior to the extension, the Secretary of State held a public consultation seeking views on the extension. The NIHRC expressed concerns about non-jury trials, initially introduced as temporary measures in 2007 becoming 'normalised' as a semi-permanent feature of NI's criminal justice system. Particular concerns included the lack of clarity around the conditions whereby the use of non-jury trials will be discontinued; the lack of recording of the alternative juror protection measures considered by the Police Service NI and Public Prosecution Service NI; the lack of protection to ensure that a non-jury trial certificate is issued only where deemed necessary in the interests of justice for the trial to be conducted without a jury; and the lack of detailed data on the current use of non-jury trials. [1]

The procedure for issuing a non-jury trial certificate has been amended to reflect the fact that juror protection measures are considered before a certificate is issued (despite this not being a statutory requirement).

The Public Prosecution Service NI has rejected the recommendation to notify the defendant of its intention to issue a non-jury trial certificate, which was set out in the tenth report of the Independent Reviewer of the Justice and Security (NI) Act 2007, David Seymour. [2]

In 2017/18, there were thirteen applications for a declaration that a closed material procedures application may be made in procedures were lodged and five declarations were made during the reporting period. Six judgments were made, one of which was a closed judgment.

In its advice on the draft NI (Stormont House Agreement) Bill the NIHRC emphasised that the discretion of the Secretary of State to prevent disclosure of information within a family report should be used sparingly. The Commission also recommended a number of additional procedural safeguards be used to enhance the confidence of the family members of victims. [3]

References

- (1) NI Human Rights Commission, 'NIHRC Response to the Public Consultation: Non-Jury Trial Provisions'. Available at: <https://www.nihrc.org/publication/detail/nihrc-response-to-the-public-consultation-nonjury-trial-provisions>
- (2) David Seymour, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007 - Tenth Report: 1st August 2016 - 31st July 2017' (NIO, 2018)
- (3) NI Human Rights Commission, 'Submission to NIO's Consultation on Addressing the Legacy of NI's Past' (NIHRC, 2018)

Media pluralism

In August 2018, journalists Barry McCaffery and Trevor Birney were arrested as part of an investigation into the suspected theft of confidential documents from the Police Ombudsman NI, relating to a police investigation into the 1994 murder of six men at Loughinisland, Co Down.[1]

Lawyers for Fine Point Films brought emergency proceedings to the Belfast High Court challenging the legality of the search warrant used by police. In May 2019, the NI High Court ruled that the search warrants issues were unlawful. The Police Service NI subsequently dropped the case against the two journalists.[2] The NIHRC reported on this situation in its Annual Statement 2019 and continues to monitor the issue.[3]

In April 2020, a journalist working for the Irish News was warned by the Police Service of Northern Ireland of a threat against them.[4] In May 2020, further threats were issued against journalists working for the Sunday Life and Sunday World.[5]

On 20 May 2020, an open letter was published by #StandUpforJournalism, which included the First and Deputy First Minister for Northern Ireland as signatories. The open letter calls "for the immediate withdrawal of all threats against journalists in Northern Ireland and for the freedom of press to be respected and protected".[6]

References

- (1) 'Loughinisland: Journalists arrested over documents investigation', BBC News, 31 August 2018.
- (2) 'Loughinisland: Police drop case against two journalists', BBC News, 3 June 2019.
- (3) NI Human Rights Commission, 'The 2019 Annual Statement' (NIHRC, 2019).
- (4) Gerry Moriarty, 'Threats against NI journalists broadly condemned', The Irish Times, 20 May 2020.
- (5) Gerry Moriarty, 'Threats against NI journalists broadly condemned', The Irish Times, 20 May 2020.
- (6) 'Stand Up for Journalism: Initiative condemning threats against NI reporters receives widespread support', Belfast Telegraph, 20 May 2020.

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The Coronavirus Act 2020 was enacted in March 2020 setting out a number of powers that can be used, if necessary, to address and stop the spread of COVID-19. Much of how these powers concern devolved matters and additional NI-specific legislation has been passed by the NI Assembly to determine how these powers can and should be utilised in a Northern Ireland context. In recent weeks, devolved regions (including Northern Ireland) guided by medical evidence have been more cautious in rolling back on the powers that have been utilised, than in England.

The Coronavirus Act 2020 and associated NI regulations enable:

- restriction of international and domestic travel;
- restriction of events, gatherings and use of premises;
- restriction of border operations;
- closures of schools and educational institutions;
- closures of childcare facilities;
- detainment of potentially infectious people;
- reduced safeguards in implementing mental health regulations;
- use of live video and audio links in court settings;
- extended retention of biometric material;
- postponement of elections;

- reduced safeguards regarding reviewing and placing children in care;
- reassignment of health and social care professionals from non-COVID related services; and
- restricted freedom of movement and assembly.

Human rights have flexibility built-in to enable governments to exercise discretion. This can be discretion to enhance or, to limit protections, except in cases of absolute rights. The Siracusa Principles clarify that any limitations on individuals' rights must respond to a pressing public or social need and be proportionate in pursuing that legitimate aim. Prevention of the spread of COVID-19 and to preserve the life and health of those affected or under threat of infection is a legitimate aim, as confirmed by the World Health Organisation. The Siracusa Principles outline that due regard shall be had to the international regulations of the World Health Organisation.

The NIHRC welcomes the introduction of a six-month Parliamentary review of the Coronavirus Act 2020 and the requirement on the Secretary of State to report every two months. The restrictions should last no longer than is absolutely necessary. However, the NIHRC is concerned that the emergency legislation applies for two years, with the ability to extend or to suspend/revive the powers resting with Ministers/devolved Departments. The NIHRC is also concerned should any of the limitation of rights set out in the measures could become the new normal.

Many people already disadvantaged are particularly impacted by the COVID-19 measures including those experiencing poverty, domestic violence, migrants, children, carers and those living in remote rural areas. While there will be a need to restore the economy and raise revenue, given the increase in public expenditure, this should be done in a way that does not penalise the already disadvantaged. Any policies to recover the substantial unplanned expenditure should ensure the best able to pay bear the greatest burden. As former UN Special Rapporteur on extreme poverty and human rights Philip Alston stated at a 2015 conference, "the regressive or progressive nature of a State's tax structure shapes the allocation of income and assets across the population, and thereby affects various types of inequality". [1]

A power that has had a significant impact on society as a whole in Northern Ireland has been restricting freedom of movement and assembly and introducing social distancing measures. Section 52 of the Coronavirus Act 2020 allows the Executive Office to take certain steps to prevent, protect against, delay or control transmission of coronavirus, or to facilitate deployment of medical or emergency personnel and resources. These steps

include prohibiting or restricting events or gatherings in Northern Ireland, and closing or imposing restrictions on persons entering or remaining in premises. The police have powers to enforce these provisions, including the ability to enter any premises and, if necessary, to use reasonable force. It is an offence to fail to comply with these restrictions, which can result in a conviction and fine. The Executive Office also has the power to pay compensation if these powers are misused or cause damage to a person or property. The Health Protection (Coronavirus Restrictions) Regulations (Northern Ireland) 2020 set out the detail of how this will be applied in Northern Ireland.

No more than two people may gather in a public place, except in defined circumstances, including where everyone is a member of the same household, for essential work purposes, to provide emergency assistance attend a funeral and participate in legal proceedings. In addition, no one should leave home except in specified circumstances including to obtain essential food and medical supplies, to seek medical assistance and access other essential services, to provide care or assistance including emergency assistance to a vulnerable person, to travel to work or provide voluntary or charitable services and to donate blood. It is also possible to attend a funeral, but who is allowed to go to a funeral is confined to family members and members of the household and in the absence of anybody else going, only then are friends permitted to attend.

The NIHRC has been monitoring the powers introduced and their implementation, advising the UK and NI governments of human rights concerns and how to address them. [2] The NIHRC has published briefings and provided evidence to the relevant Ministers, departmental officials and Parliamentary inquiries. The NIHRC has also engaged with other public bodies and civil society individuals on monitoring the impact of these powers. The NIHRC has also provided advice to individuals on the relevant human rights concerned through its information clinic.

References

- (1) Philip Alston, 'Tax Policy is Human Rights Policy: The Irish Debate', Keynote Address at Christian Aid Conference on The Human Rights Impact of Tax and Fiscal Policy in Dublin, 12 February 2015
- (2) NI Human Rights Commission, 'Briefing: Coronavirus Act 2020' (NIHRC, 2020); NI Human Rights Commission, 'Briefing: Coronavirus Measures Updates' (NIHRC, 2020); NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); NI Human Rights Commission, 'Response to Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020)

Most important challenges due to COVID-19 for the NHRI's functioning

In line with Government requirements and to ensure the safety of staff and the wider public, the NIHRC has had to close its physical offices. The NIHRC is continuing to operate remotely through email, phone and online facilities.

The public are able to continue to contact the NIHRC via email and phone, with each query dealt with as required.

The NIHRC is able to continue to advise government and engage with its stakeholders through conference facilities, email and, on the rare occasion, in socially distanced meetings (for example providing oral evidence to NI Assembly Committees)

The NIHRC has managed to maintain its monitoring capacity and to deliver its services without much disruption. The area most affected by the restrictions are our public events, which have all been cancelled for the foreseeable. The NIHRC continues to host replacement events through online platforms, where appropriate. The NIHRC also continues to keep the public informed of its activities through its website and social media.

