

cute a prisoner who has been on death row for more than three and a half years. The Privy Council was of the view that the five-year ruling was not to be regarded as a fixed limit applicable in all cases, but as a norm which may be departed from if circumstances require. The SR repeated his concern that such decisions might encourage governments to carry out death sentences more speedily, which, in turn, might affect defendants' rights to full appeal procedures.

The cases referred to the government related to a death in police custody and the apparent failure either to discipline the officers involved or prefer charges and the killing of three members of the Irish Republican Army by members of the British armed forces in Gibraltar in March 1988. The SR had requested information from the government on the steps it has taken in response to the 1995 judgement by the European Court of Human Rights on this case (see *McCann & Others v. the United Kingdom*, 27.09.1995).

The SR also requested from the government further clarification with regard to the inquest procedure in the United Kingdom and, in particular, the differences in this procedure between England and Wales, and Northern Ireland. The questions raised by the differences included: what the verdict of "unlawful killing" was in England and Wales; what was the function of an inquest if not to express opinions on matters of civil and criminal liability; why the differences between the inquest procedure in England and Wales, and Northern Ireland were considered to be of a procedural nature; and what were the reasons for maintaining differences between the two procedures.

Independence of judges and lawyers, Special Rapporteur on the: (E/CN.4/1998/39, Section III; E/CN.4/1998/39/Add.4)

The main report notes that communications were sent to the government and a reply was received. No details of the case(s) were provided.

The Special Rapporteur (SR) conducted a field mission to the United Kingdom from 20 to 31 October 1997. The visit was planned with a primary focus on allegations received over several years related to: abuse of defence lawyers in Northern Ireland by some police officers since 1992, as well as similar abuse, although to a lesser degree, in England; and concern over a number of provisions restricting access to legal advice, including deferrals of access to a solicitor for periods of up to 48 hours under emergency laws, refusal to allow solicitors to remain present during police interviews in holding centres in Northern Ireland, and closed visits for the purpose of legal consultations for certain prisoners in England.

Additional issues taken up by the SR during the visit were: the absence of safeguards to prevent abuse of lawyers, such as video and audio-recording of police interviews; the unresolved murder of Belfast lawyer Patrick Finucane, in which it was claimed there had been official collusion; provisions in emergency legislation (e.g., absence of a jury, a lower threshold for admissibility

of confession evidence) and in ordinary criminal law (e.g., the abrogation of the right to silence) which infringe on the ability of the judiciary to function impartially and independently; and provisions of the Police Act which do not exempt lawyers' offices from "bugging" and thereby undermine the lawyer/client privilege.

The report of the mission (E/CN.4/1998/39/Add.4) contains specific information on, *inter alia*: intimidation and harassment of lawyers, deferrals of access to counsel, the right to have a lawyer present during police interrogations, closed visits, video and audio recording of police interviews, the right to remain silent, admissibility of confession evidence, the Diplock Courts, "bugging", and incorporation of the European Convention on Human Rights into domestic legislation.

The report notes that the emergency legislation enacted to combat terrorism in Northern Ireland included measures giving the Royal Ulster Constabulary (RUC) extraordinary police powers to stop, question, search, arrest, detain, and interrogate anyone merely suspected of terrorist activity. The report further notes that, in fact, emergency legislation has been in force in Northern Ireland since partition in 1922. The legislation with the greatest effect in force at the time of the SR's visit was the Northern Ireland (Emergency Provisions) Act 1996 (EPA), and the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA).

On the issue of intimidation and harassment of defence lawyers, the report notes that the tactics have been used particularly against those representing individuals accused of terrorist related offences. The abuse was reported as taking various forms, ranging from mild forms of harassment (e.g., the lawyer kept waiting to see the client) to interference in the solicitor/client relationship (such as, by telling the detainee that the lawyer is not interested in him or her, the lawyer's advice should be ignored, the lawyer is representing the paramilitaries and not the client), to physical abuse and/or death threats. The SR stated that many of the lawyers interviewed referred to the harassment and intimidation as an occupational hazard that they have come to expect and accept, noting that in the absence of audio-recording there is only hearsay evidence to prove the allegations, that is, the word of the client against that of the RUC officer. Consequently, most lawyers stated that they find it futile to file a complaint, particularly in light of the fact that any investigation will be carried out by the RUC itself, a process in which they have no confidence.

The allegations were refuted by the Chief Constable of the RUC on the basis that: there is a lack of evidence to substantiate the allegations, and further, there were hardly any complaints made by lawyers; lawyers have not sought judicial review of detentions on grounds of harassment and intimidation; the greatest degree of respect is shown to lawyers and, consequently, there could be no possible benefit for a police officer to make a disparaging comment or threat; and numerous safeguards have been put in place to prevent such abuse — including the use of closed circuit televisions which must