



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Defamation

Introduction

1. The Commission pursuant to Section 69(3) of the Northern Ireland Act 1998 reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. The Commission submits this advice to the Committee for Finance and Personnel ('the Committee') in advance of our oral briefing on 3rd July 2013.
2. The Commission bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include:
 - The European Convention on Human Rights, 1950 ('ECHR') [UK ratification 1951]; and
 - The International Covenant on Civil and Political Rights, 1966 ('ICCPR') [UK ratification 1976].
3. The Commission recalls that Section 6 and Section 24 (1) of the Northern Ireland Act 1998 require that all Acts of the Northern Ireland Assembly and Executive are compatible with the ECHR. In addition, Section 14 and Section 26 also require compliance with international obligations.
4. In this advice the Commission will set out the relevant standards of international human rights law, the relevant findings of the UN Human Rights Committee and the response of the state party.

Human Rights Law

5. The right to freedom of expression is protected by the ICCPR, Article 17 and the ECHR, Article 10. Article 17 of the ICCPR states:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals. "

6. In General Comment number 34 on Article 19 the UN Human Rights Committee has elaborated on how defamation laws can be developed to ensure compliance with Article 19.

"47. Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the

expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.”¹

7. The right to private life is protected by the ICCPR, Article 17 and the ECHR, Article 10. Article 17 of the ICCPR states:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference”

8. In General Comment number 16 on Article 17 the UN Human Rights Committee has elaborated on the state’s obligation to protect the personal honour and reputation of individuals.

“11. Article 17 affords protection to personal honour and reputation and States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible. States parties should indicate in their reports to what extent the honour or reputation of individuals is protected by law and how this protection is achieved according to their legal system.”²

UN Human Rights Committee

9. In its concluding observations on the sixth periodic report of the United Kingdom on compliance with the ICCPR the UN Human Rights Committee stated:

¹ Human Rights Committee General comment No. 34 Article 19: Freedoms of opinion and expression 12 September 2011 CCPR/C/GC/34

² Human Rights Committee General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17) : 8th April 1988

"The Committee is concerned that the State party's practical application of the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work, including through the phenomenon known as "libel tourism." The advent of the internet and the international distribution of foreign media also create the danger that a State party's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest. (art. 19)

The State party should re-examine its technical doctrines of libel law, and consider the utility of a so-called "public figure" exception, requiring proof by the plaintiff of actual malice in order to go forward on actions concerning reporting on public officials and prominent public figures, as well as limiting the requirement that defendants reimburse a plaintiff's lawyers fees and costs regardless of scale, including Conditional Fee Agreements and so-called "success fees", especially insofar as these may have forced defendant publications to settle without airing valid defences. The ability to resolve cases through enhanced pleading requirements (e.g., requiring a plaintiff to make some preliminary showing of falsity and absence of ordinary journalistic standards) might also be considered. ³

State Party Response

10. HM Government during the Second Universal Periodic Review of the United Kingdom by the UN Human Rights Council highlighted the Defamation Bill. In its report to the UN Universal Periodic Review of 8 March 2012 the UK Government stated :

"The [Defamation] Bill reflects the Government's view that the law needs to be rebalanced to secure more effective protection for freedom of speech and to stop the threat of long and costly libel proceedings being used to stifle responsible investigative reporting and scientific and academic debate.... The core aim of the Bill is to get the balance right, so that free speech is not unjustifiably impeded by actual or threatened libel proceedings, while ensuring that people who have been libelled are able to protect their reputation. With this in mind, the Bill contains a range of measures to support freedom of expression."⁴

³ Concluding observations of the Human Rights Committee on sixth periodic report submitted by the United Kingdom CCPR/C/GBR/CO/6 30 July 2008

⁴ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/GBSession13.aspx>

11. In March 2015 the UN Human Rights Committee will examine the seventh periodic report of the UK. The Report by HM Government will include information on measures taken to address the recommendations of the UN Human Rights Committee. The UN Human Rights Committee will assess the adequacy of the State Party's response at this stage.
12. It is important to note that the recommendation of the UN Human Rights Committee applies to the entire jurisdiction of the United Kingdom, including Northern Ireland. At the time of the UN Human Rights Committee's recommendation the law governing defamation in Northern Ireland and England & Wales, whilst in separate legal instruments, was directly comparable. Whilst the law in England & Wales has now been "rebalanced" the imbalance which existed during the time of the UN Human Rights Committee's recommendations remains present in Northern Ireland.
13. The Commission is concerned that the present arrangement has the potential to not only undermine the right to freedom of expression in Northern Ireland but throughout the UK as freedom of expression, by its nature, cannot be regulated by different frameworks within the same jurisdiction. This creates a risk that Northern Ireland could become a capital for, what the UN Human Rights Committee describes as, "libel" tourism. Furthermore the law governing defamation in Northern Ireland remains outdated, in particular individuals in Northern Ireland who consider that they have been defamed on a user generated content website, such as facebook, will not be able to avail of a procedure provided for in the 2013 Act to assist them in identifying and instituting proceedings against the author.
14. The Council of Europe too has been active in the area of freedom of expression and in March 2012 the Committee of Ministers held a thematic debate on "Safety of journalists" on the basis of a discussion paper by the Secretary General of the Council of Europe⁵. In his report, the Secretary General reported about a worrying trend on the misuse of lawsuits against media professionals who acquire or publish information of public interest, the disclosure of which the authorities try to prevent without a legitimate reason. He further reported that defamation laws have been misused to silence media seeking to disclose information of public interest or information that will help people take informed decisions when participating in democratic

⁵ [http://www.coe.int/t/dghl/standardsetting/media/CDMSI/SG%20Inf%20\(2012\)6_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/CDMSI/SG%20Inf%20(2012)6_en.pdf)

processes or when otherwise holding to account those in posts of political authority⁶.

15. The Commission advises that the Committee consider how the law governing defamation in this jurisdiction can be re-balanced in light of the concerns of the UN Human Rights Committee and others.

⁶ Op cit page 5