



**COMMENTS ON
BRIAN CURRIN'S WRITTEN REPRESENTATIONS
TO THE SPECIAL GENERAL MEETING OF THE GRAND
ORANGE LODGE OF IRELAND
1st October 2002**

The Ulster Human Rights Watch has examined the written representations produced by Mr Brian Currin to the Special General Meeting of the Grand Orange Lodge of Ireland on 1st February 2001 and now highlights four major flaws of this document: (1) the omission of the Public Order (Northern Ireland) Order 1987; (2) the absence of an in-depth analysis of the consequences of the Public Processions (Northern Ireland) Act 1998; (3) the omission of Article 9 of the European Convention on Human Rights; and (4) the absence of reference to the issue of terrorist-influenced residents groups.

1. The omission of the Public Order (Northern Ireland) Order 1987

Mr Currin indicates that he has “very carefully studied: the Public Processions (N.I.) Act 1998; the Guidelines produced by the Parades Commission; many contentious determinations issued by the Parades Commission since its inception in 1998; and all the relevant cases decided by the European Commission and European Court of Human Rights dealing with the right to freedom of expression and the right to peaceful assembly during the past 20 years”.

However, Mr Currin makes no mention at all of the Public Order (N.I.) Order 1987 SI 1987/463 (NI7). Obviously, he has not taken into account in his written representations this part of the legislation which used to apply to processions and now regulates protests only, while the Public Processions (N.I.) Act 1998 now applies to parades. Protests are, as before, monitored by the PSNI of their own accord, without any involvement of the Parades Commission. Parades are submitted to a special, more restrictive legal regime, under the ultimate control of the Parades Commission, which is empowered to make final decisions on parades.

Nevertheless, both the Public Order (N.I.) Order 1987 and the Public Processions (N.I.) Act 1998 fall under the umbrella of Article 11 of the European Convention on

Human Rights (ECHR) i.e. the right to freedom of peaceful assembly. It is therefore unacceptable that the same freedom should be regulated in two completely different ways, thereby putting those who organise a procession under pressure from those who organise a protest. The right to process is assessed by the Parades Commission, who take into account the possible consequences of the protest to the parade, while the right to protest can be exercised without the agreement of the Parades Commission. If the threat of violence is made by protesters, the Parades Commission takes it into account and imposes conditions (which in practice can amount to a ban) on proposed parades. As a result, protesters manage to thwart lawful parades. On the contrary, protesters have the right to protest whenever a parade is involved, since it is already granted to them by the Public Processions (N.I.) Act 1998.

As a result, the legislation gives protesters the means of controlling the right to freedom of peaceful assembly of those who organise a peaceful procession.

Mr Currin has totally omitted to study the Public Order (NI) Order 1987 and therefore has not considered the imbalance which exists between the rights of protesters and those of procession organisers.

2. The absence of an in-depth analysis of the consequences of the Public Processions (NI) Act 1998

Mr Currin states “the Public Processions Act N.I. 1998 is probably the clearest and most detailed law in Europe providing domestic guidelines to the application of Article 11 of the European Convention on Human Rights, namely the Right to Peaceful Assembly and Freedom of Association”.

On reading this statement, one would assume that very detailed legislation provides a better guarantee for the right to freedom of peaceful assembly. However, details regulating a freedom can have the adverse effect of putting increasing conditions and limitations to the enjoyment of that freedom. Rather than protecting the freedom, they are in fact undermining it.

Mr Currin indicates, for example, that there is a “special reference to traditional routes and the premium attached to them in the Parades Commission’s Guidelines is not a factor which enjoys any special consideration by the European Commission or the European Court of Human Rights”. It would appear at first glance that the reference to “traditional routes” enlarges the right to freedom of peaceful assembly. In actual fact it does not enforce or increase the rights of those who want to parade along a traditional route. Section 8(6) of the Public Processions (N.I.) Act prescribed that the guidelines shall provide that the Parades Commission should have regard to “*the desirability of allowing a procession customarily held along a particular route, to be held along that route*”. What is to be considered is the “*desirability*” of allowing a procession, but this does not reinforce the right in any way.

Furthermore, if anyone would want to organise a parade which does not follow a traditional route, the Parades Commission would be quick to classify it as a non-

traditional parade¹. The legislation creates a distinction between parades following a traditional route and parades which do not follow a traditional route, making the latter of a lesser standing than the former. Such legislation helps the purpose of those who seek to withhold the right to freedom of peaceful assembly from those who wish to parade.

Mr Currin has seriously failed to analyse the consequences of the Public Processions (N.I.) Act 1998, which jeopardizes the right to freedom of assembly of a considerable section of the community.

3. The omission of Article 9 of the European Convention on Human Rights

Mr Currin has not made any reference to Article 9 of the ECHR which guarantees the right to freedom of religion. Since the Orange Order is essentially based on the Protestant Reformation, the right to freedom of religion is an essential aspect which should not have been overlooked. The right to freedom of religion includes the right to manifest one's religion publicly. It also contends the right to try to convince one's neighbour through appropriate means. This is clearly implied in Article 9, which reads "*this right includes freedom to change his religion or belief*". For the Orange Order this means proclaiming the Gospel of Jesus Christ through verses of the Gospel printed on banderolles as well as Christian hymns, etc. Therefore, if the possibility to witness to others is forbidden, the freedom to change one's religion or belief would be made null and void, in violation of the ECHR.

Unfortunately, in his written representations, Mr Currin has totally sidelined the very important issue of the right to freedom of religion enshrined in Article 9 of the European Convention on Human Rights.

4. The absence of reference to the problem of terrorist-influenced residents groups

In his representations Mr Currin has completely omitted the very serious and concerning issue of terrorist-influenced residents groups.

By threatening violence, terrorist-influenced residents groups are attempting to force the Orange Order to agree to face-to-face discussion. Their aim is to force the Orange Order to negotiate their right to freedom of peaceful assembly. The Public Processions (N.I.) Act 1998, which provides that the Parades Commission's duty is "to promote and facilitate mediation as a means of resolving disputes concerning public processions" (Section 2 (1)(b)), favours residents groups.

Therefore, in order to undermine others' rights to freedom of peaceful assembly and freedom of religion, terrorist-influenced residents groups need only threaten violence and then demand face-to-face negotiations. If the Orange Order refuses to give in to

¹ Determination made in relation to the Pioneer Flute Band Parade, notified to take place in Lurgan on Friday 20 September 2002.

this blackmail, the Parades Commission renders a determination prohibiting the parade, on the basis of the Public Processions (N.I.) Act 1998.

Those who are influenced by terrorists resort to means of violence in pursuit of their own agenda, with the purpose of undermining if not destroying the rights and freedoms of others. The suggested “mediation” is in fact a process through which rights and fundamental freedoms are to be surrendered.

The very serious issue of terrorist-influenced residents groups, which the Public Processions (N.I.) Act 1998 favours, has been completely overlooked by Mr Currin, who has not made any mention of it anywhere in his representations.

CONCLUSION

Since Mr Currin has: omitted to study the Public Order (N.I.) Order, omitted to take into account Article 9 of the ECHR, abstained from carrying out an in-depth analysis of the consequences of the Public Processions (N.I.) Act 1998, and has totally overlooked the problem of terrorist-influenced residents groups, his written representations certainly cannot be used as a point of reference or considered a useful and reliable document.