Internment

Latest Update

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As well as being an extreme measure taken by a government, internment, a process where persons are imprisoned on the authority of a senior politician and without due process or judicial trial proceedings solely on the grounds that they are perceived as a threat to the state is both politically and legally a sensitive subject. In recent times the UK introduced interment during the 1968-1997 Irish Troubles and, it could be argued following the 9/11 Al Qaeda attacks on the USA, in 2001 when Part IV of the Anti-Terrorism, Crime and Security Act 2001 was introduced.

Overview of the Topic

1. **Why Interment was introduced in Northern Ireland in the 1970's** – When the British Army were sent to Northern Ireland in 1969 it was believed that within a certain timescale they would defeat an Irish republican group, the Provisional IRA (PIRA), who wanted the end of British rule in the Province, but by 1971 it was recognised that this was not possible (McCleery 2012 p. 415-416). From January to July 1971 violence in Northern Ireland intensified as there had been 304 bomb explosions, 13 Soldiers, 2 police officers and16 civilians killed during that period (*Ireland v UK* (1978) application 5310/71, paragraph 32). Added to the explosions and deaths, three reasons were given by the British Government why internment was deemed necessary in 1971:

   (a) Normal procedures of investigation and criminal prosecution had become inadequate to deal with PIRA terrorists and it was considered that the

ordinary criminal courts could no longer be relied on as the sole process of law for restoring peace and order;

(b) There was widespread intimidation of the Northern Irish population and such intimidation made it impossible to obtain sufficient evidence to secure a criminal conviction against known PIRA terrorists. Also the conduct of police enquiries was seriously hampered by the grip PIRA had in certain 'no-go' areas that were Catholic strongholds where, unlike the police, IRA operatives could operate in comparative safety;

(c) The ease of escape routes across the territorial border between Northern Ireland the Irish Republic presented difficulties of control for the authorities (*Ireland v UK* (1978) application 5310/71, paragraph36).

2. **The first statutory order used** – the first piece of legislation used to introduce internment in 1971 was article 12 of The Civil Authorities (Special Powers) Act (Northern Ireland) 1922. Article 12 gave the Northern Ireland Home Affairs minister a power to issue an internment order against a person who is suspected of acting or being about to act in a manner prejudicial to the preservation of peace and the maintenance of order in Northern Ireland and this period of internment was without trial. This power had been on the statutes in both Northern Ireland and the Irish Republic since the 1921 partition of the island and had been used on three previous occasions in Northern Ireland, the last prior to 1971 being from 1956-1961 were the IRA had been active, but to a lesser extent than PIRA were during the Irish Troubles.
3. **Operation Demetrius** – at 4.30 am on the 9th August 1971, armed with a list of names and addresses of suspected PIRA operatives, the British Army, supported by the Royal Ulster Constabulary (RUC) raided a number of premises in

Northern Ireland. Of the 342 men arrested that day, 116 were released within 48 hours (McEvoy 2001 p.211). One problem with the intelligence used to provide the Army and RUC's list of targets to be arrested and detained was it contained names of retired republicans, trade unionists, middle-class civil rights campaigners and in many cases men whose republican connections was no more than inactive sympathy for PIRA (McCleery 2012 P.418). One result of the introduction of internment is it united Catholics on a scale not previously seen in the Province (Moloney 2002 p.102) including increasing the support for PIRA. This support saw an upsurge in violence resulting in 610 murders in the first 17 months after internment compared to 66 in the first two years leading up to internment (Dixon and O'Kane 2011 p.30). The powers the British Army were using seemed to be arbitrary and were questioned in *Kelly v Faulkner* [1973] N. Ir. L. R. 31. The Northern Ireland Court of Appeal refused to accept that British soldiers dealing with emergency powers should be exempt from the normal requirements for the execution of a valid arrest. This was addressed by the UK Parliament who on introducing section 12 of the Northern Ireland (Emergency Provisions) Act 1973 gave members of Her Majesty's armed forces the power to arrest persons they suspect of committing, having committed or being about to commit any offence (section 12(1)). These statutory provisions included a power of entry and search to premises the member of the armed forces to arrest that person or person they suspected of being a terrorist or having committed an offence involving the use or possession of explosives or a firearm (section 12(3)).

4. **Legislation Governing Internment in Northern Ireland post 1971 –**

Following the Detention of Terrorists Order 1972 issued from Westminster,

from 1973 a number of Emergency Provisions Acts were introduced from Westminster with the Northern Ireland (Emergency Provisions) Act 1973 where Schedule 1 of the 1973 and in the subsequent Acts of 1975 and 1978 covered the detention of terrorists. In the 1973 Act it was a Commissioner that authorised a suspected terrorist's detention with a Commissioner being a person that held or had held a judicial office in the UK (Schedule 1 Part I paragraph 3 1973 Act. The Northern Ireland (Emergency provisions) Act 1975 and the Emergency Provisions Acts that followed changed this to an advisor. The authorisation of the detention of terrorists (persons who had been concern win the commission or attempted commission of an act of terrorism or who had directed, organised or trained persons for the purpose of terrorism – Schedule 1 Part I paragraph 8(1)(a) Northern Ireland (Emergency Provisions) Act 1975)) by the Secretary of State (Northern Ireland minister) where that detention was necessary for the protection of the public (Schedule 1 Part I paragraph 8(1)(b) Northern Ireland (Emergency Provisions) Act 1975) could only be made provided they had received a report from an Advisor. An Advisor was simply a change of term from a Commissioner in the 1973 Act, as it was still a person who held or who had held a judicial office in the UK (Schedule 1 Part I paragraph 3(1)).

5. **Ireland's human rights challenge against the UK -** When introducing the legislation relating to internment in Northern Ireland, the UK Government declared a derogation from its obligations laid down in the relevant articles contained in the European Convention on Human Rights (ECHR). Providing the measures taken are not inconsistent with obligations under international law, article 15 ECHR allows a state to derogate from ECHR obligations in a time of

war or other public emergency that threatens the life of the nation. In relation to the UK's internment legislation, this was examined by the European Court for Human Right in *Ireland v UK* (1978) Application number 5319/71. The Court unanimously held that at that time there existed in Northern Ireland a public emergency that was threatening the life of the nation within the meaning of article 15 (II On Article 5 paragraph 11) and that by a majority vote (16-1) the period of internment form 1971 – 1975 did not violate article 5 (right to liberty) (II On Article 5 paragraph 13), although the Court did find that there was a violation of article 3 (prohibition of torture, inhuman or degrading treatment) in the interviewing practices deployed by the RUC (I On Article 3 paragraphs 1 – 10). The important factor in this decision was the 'life of the nation' was threatened by the continued programme of violence carried out by PIRA as well as by loyalist terror groups such as the Ulster Volunteer Force.

6. **Criticism of internment in Northern Ireland –** It has been claimed that internment in Northern Ireland did no more than send out a message that Irish Republicans were the enemy with internment demonstrating the UK Government's desire not only to reduce the levels of violence but also incapacitate Republican suspects and use it as a broader symbolic punishment of those who opposed the Northern Irish state (McEvoy 2001 p.215). It was not just academic writers that were critical of internment during the Irish Troubles, there was also political criticism. Lord Gardiner, a Labour party politician and Lord Chancellor from 1964–1978 carried out a report in 1975 on the UK Parliament's legislative provisions in Northern Ireland. His Report was critical of internment as he saw it as bringing the law into contempt and caused deep

resentment, a resentment that increased the violence in the Province (1975 pp-38-49). He said:

> 'In the short term [internment] may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice and obstruct those elements in Northern Ireland society which could lead to reconciliation' (1975 p.43).

The Gardiner Report was discussed in the House of Commons in February 1975 and the political mood at the time can be seen in the exchanges that took place. When asked about the criticism in the Report that holding detainees under internment orders were contrary to social justice Mr Orme, the former Northern Ireland minister replied impassively that the Gardiner Committee also acknowledged that detention was a matter for political decision. This was a response he gave to other points raised in the Report by MP's concerning the condition of the prisons those arrested under internment provisions were detained in and how there should be a separate Bill for Rights for Northern Ireland (Hansard 13th February 1975). As well as criticism within the UK of internment, international condemnation of the policy peaked in 1981 when Republican prisoners went on hunger strike (Coogan1995 pp227-229). That protest ended with ten of the hunger strikers dying between May – August 1981 (Coogan 1995, p.236). One of the hunger strikers, Bobby Sands, although a detainee in prison, stood as an 'H-Block/Armagh' candidate in the Fermanagh-South Tyrone constituency by-election and was elected as an MP in April 1981 (Taylor 1997 p. 240). It was events such as these that resonate with Lord Gardiner's findings where internment resulted in a more deeply divided and entrenched community making it harder for reconciliation processes to take place.

7. **UK Internment of jihadist terrorists** – Following the 9/11 attacks by Al Qaeda terrorists on the USA, the UK introduced the Anti-Terrorism, Crime and

Security Act 2001 where Part IV raised concerns in relation to articles 5 (right to liberty and freedom) and 6 (right to a fair trial) of the ECHR. In effect the Act was internment of non-UK nationals who were believed to be a terrorist threat to the UK. The detention orders were granted under the order of a senior politician without any judicial security or the opportunity to challenge the incarceration in a UK court of law. In part IV, section 21 of the Act gave the Home Secretary power to detain in prison persons they reasonably believed was a terrorist and their presence in the UK was a risk to national security. This provision applied only to non-UK citizens and the detention was deemed necessary where their removal from the UK was prevented by a point of law related to an international agreement or a practical consideration (those points of law included those contained in Schedule 3 of the Immigration Act 1971) . In enacting these provisions the UK state relied on an article 15 ECHR derogation issued under section 14 Human Rights Act 1998 where the UK state argued that this was needed as the international terrorist group, Al Qaeda's threat was sufficient to be a public emergency that threatened the life of the nation (*A and others v SSHD* [2004] UKHL 56 at paragraphs 16 – 24). The grounds of the emergency was provided by the Attorney General who submitted the emergency could be regarded as imminent if:

'…an atrocity was credibly threatened by a body such as Al Qaeda which had demonstrated its capacity and will to carry out such a threat, where the atrocity might be committed without warning at any time. The Government, responsible as it was and is for the safety of the British people, need not wait for disaster to strike before taking necessary steps to prevent it striking (at paragraph 25)'

Lord Bingham stated these provisions were discriminatory as they applied to non-UK nationals only and did not include UK citizens, especially those who were radicalised and who were also seen as a terrorist threat. He drew

comparisons with Northern Ireland internment provisions that were tested in *Ireland v UK* (1978) that were not seen as discriminatory as they applied to both Republican and Loyalist terrorists (at paragraph 54). He highlighted how the claim by the UK Government that international terrorists were a threat to the 'life of the nation' was undermined by the fact UK nationals who are suspected terrorists are just as dangerous as non-UK nationals (at paragraph 53). Regarding the article 15 derogation Lord Hoffman examined what was meant by the term 'threatening the life of a nation'. In his judgement he gave an eloquent explanation of factors to consider when applying article 15 under the provision of 'threatening the life of a nation'. He said:

'When one speaks of the "life" of the nation, the word life is being used in the metaphorical sense. The life of the nation is not coterminous with lives of its people. The nation, its institutions and values, endure through generations. England is the same nation as it was at the time of the first Elizabeth or the Glorious Revolution. The Armada threatened to destroy the life of the nation, not by loss of life in battle, but by subjecting English institutions to the rule of Spain and the Inquisition. The same was true of the threat posed to the United Kingdom by Nazi Germany in the Second World War. This country, more than any other in the world, has an unbroken history of living for centuries under institutions and in accordance with values which show a reasonable continuity' (at paragraph 91)

The threat is in regard to the way of life as how the UK is governed, its laws, its traditions and values. The life of a nation is not the sole preserve of the physical life of a person. This is an important point to consider regarding terrorist threat. During the Irish Troubles PIRA's England Department ASU's attacked the British Government's Cabinet in the 1984 Brighton bomb (Taylor 1997 pp.252-253) as well as mortar bombing the centre of the Government's Cabinet at 10 Downing Street in 1991 (Taylor 1997 p.321), which along with the attacks on the British military targets on the British mainland did not bring to its knees the life of the British nation. However as highlighted above, the activity of both

Republican and Loyalist groups in Northern Ireland was threatening the life of the Province. This included the UK Government in Westminster suspending the government rule from Stormont in Northern Ireland, and granting the British Army powers of arrest and search within the Province. One can see why in *Ireland v UK* (1978) the European Court of Human Rights accepted the article 15 derogation order from the UK. Even the 9/11 Al Qaeda attacks did not weaken the life of the USA. It disrupted it for a day, but as we have seen since that attack, the US nation life is stronger in regards to dealing with the terrorist threat it faces today.

8. **Impact of the House of Lords decision in *A and others v SSHD* (2004)** –An order by a politician requiring the arrest and detention of persons suspected of being a terrorist or linked to acts of terrorism without any judicial scrutiny is one that not only challenges constitutional issues around the rule of law and security of the liberty of the individual, but is a divisive move as it can not only entrench values and opinions and be an accelerant to further violence and hostility. In the House of Lords finding that Part IV of the Anti-Terrorism, Crime and Security Act 2001 violated article 5 (right to liberty of the person), 6 (right fair trial) and 14 (prohibition of discrimination) (*A and others v SSHD* [2004] UKHR 51, paragraphs 71-73), key to this was the derogation was not necessary and proportionate as required under article 15. This was confirmed by the European Court of Human Rights Grand Chamber in *A v UK* (2009) Application 3455/05 who on examining the provision of article 15 ECHR held that national authorities should not be criticised when in light of the evidence available at the time they fear an attack that can lead to an atrocity might be committed without warning. The Grand Chamber added that a State does not

have to wait for a disaster to strike before taking article 15 measures (at paragraph 177). The Grand Chamber did state that under article 15 when assessing whether the life of a nation is threatened by a public emergency weight must not only be given to a state's executive and Parliament, but also weight must also be accorded to the views of national courts, '…who are better placed to assess the evidence relating to the existence of an emergency' (at paragraph 180). The Grand Chamber agreed with the majority decision of the House of Lords in *A and others.* As a result of the decision in *A and others* the UK Government introduced the Prevention of Terrorism Act 2005 that introduced control orders granted with judicial supervision which were later found to violate the ECHR and resulted in Tpims. a diluted form of a control order being introduced in the Terrorism Prevention and Investigation Measures Act 2011. These are quasi-criminal provisions of maintaining surveillance on those suspected to be terrorists but where there is insufficient evidence to bring criminal proceedings against individual. The lesson for states who want to act within the rule of law regarding internment provisions is that taking a person's liberty away, especially without judicial supervision is very serious step and is not one to be taken lightly. Reliance on derogation under article 15 ECHR based on a narrow interpretation of what amounts to the threat to nation by a terrorist threat cannot be so easily achieved. While terrorist actions such as the 2005 London bombing by Al Qaeda operatives (who were UK nationals) are tragic, such actions, as Lord Hoffman pointed out in *A and others* does not threaten the life of a nation.

Key Acts

The Civil Authorities (Special Powers) Act (Northern Ireland) 1922

Detention of Terrorists Order 1972

Northern Ireland (Emergency Provisions) Act 1973

Northern Ireland (Emergency Provisions) (Amendment) Act 1975

Northern Ireland (Emergency Provisions) Act 1978

Human Rights Act 1998

Anti-Terrorism, Crime and Security Act 2001

Key Subordinate Legislation

1953 European Convention on Human Rights

Key Quasi-legislation

Key European Union Legislation

None

Key Cases

A v UK (2005) Application 3455/05

A and others v Secretary of State for the Home Department [2004] UKHL 56

Ireland v UK (1978) Application 5310/71

Kelly v Faulkner [1973] N. Ir. L.R. 31

Key Texts

Further Reading

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