

The Impact of Terrorism on Democracy in Northern Ireland

by Axel Schmidt

“Ye shall know them by their fruits. Do men gather grapes of thorns, or figs of thistles? Even so every good tree bringeth forth good fruit; but a corrupt tree bringeth forth evil fruits” (Matthew 7 v. 16-17).

Abstract

The terrorist activities by the IRA for a politically united Ireland were one of the most sustained and prolonged campaigns in Northern Ireland, unparalleled in Western Europe since the World War II. Under the pressure of violence, the British government engaged in a process that delivered new constitutional arrangements combined with major legislative reforms, giving terrorist-related politicians access to the governance of Northern Ireland and control over its destiny. This article will discuss the project Mobilizing Opposition Networks to Nationalistic European Terrorism (MONNET), which analyzed the progressive undermining of democracy and human rights by terrorism in Northern Ireland with the view of developing a message to mobilize the European public against terrorism in all its forms. This article will also mention the recommendations made to the European Commission through the MONNET programme.

Introduction

Since the terrorist attacks in Madrid on March 11, 2004, the European Union has adopted a counter-terrorism strategy with a commitment to combat terrorism globally while respecting human rights. Its aim has been to make Europe safer, allowing its citizens to live in an area of freedom, security and justice. The four-fold objectives set out in the EU strategy are: to prevent new recruits to terrorism, to protect potential targets, to pursue and investigate members of existing terrorist networks and to improve the EU's ability to respond to and manage the consequences of terrorist attacks.

Within the context of this global strategy, project MONNET was implemented through the cooperation of victims' groups with the support of the European Commission – Directorate Justice, Freedom and Security. The project sought to analyse the impact terrorism had on democracy, human rights and fundamental freedoms in Northern Ireland so as to lay down the foundation for preparing a message to mobilise the public against terrorism in all its forms in the United Kingdom and the EU.

Northern Ireland consists of six counties and is part of the UK. The majority of its people, mainly Protestants as well as a significant number of Roman Catholics, wish the Province to remain British. Over the past four decades Northern Ireland has been plagued by a sustained

terrorist campaign by the IRA [1] with the aim of achieving a united Ireland through a transfer of sovereignty over Northern Ireland from the United Kingdom to the Republic of Ireland. The success of IRA violence has been to constrain the British authorities to adopt and enforce a new written constitution for Northern Ireland and to introduce legislative reforms in key areas of Northern Ireland society so as to obtain the means of integrating Northern Ireland into the Republic of Ireland. Terrorists, who used to be ostracised from democratic institutions, have now been given access to the reins of power.

The findings of MONNET are a result of the analysis of the consequences of the terrorist campaign in relation to (1) the process that delivered the new constitutional arrangements, (2) the unstable new constitutional arrangements resulting from the Belfast Agreement and subsequently the St Andrews and Hillsborough agreements, (3) the new legislation to assuage IRA/Sinn Fein demands, (4) the use of the European Convention on Human Rights (ECHR) to undermine the British state; prompting (5) the recommendations that were made to the European Commission.

New Constitutional Arrangements

The process leading to new constitutional arrangements for Northern Ireland has been characterized by progressive surrender to IRA terrorism, the enemy of democracy. The gradual undermining and perverting of democracy by terrorism has taken place over a period of time extending from the mid-1980s to the present day.

The first major concession to the demands of IRA terrorists was the Anglo-Irish Agreement of 1985 which was proposed and approved by the British and Irish governments without consulting the people of Northern Ireland. By means of this agreement the government of the Republic gained a consultative role in Northern Ireland affairs through an inter-governmental conference. Although the aim of this agreement was to improve security through greater cooperation with the Republic, it had the opposite effect of increasing IRA violence in order to gain further and decisive concessions from the British authorities.

On December 15, 1993, the Downing Street Declaration was issued. The British and Irish governments declared that they were working in view of achieving “*peace, stability and reconciliation established by agreement among all the people who inhabit the island*” with the aim of bringing an end to violence. The British government again made concessions to the IRA which declared a ‘cease-fire’ at the end of August 1994. It was followed by the Frameworks document issued on February 22, 1995, which proposed a three-strand approach to the Northern Ireland problem, taking into account the functioning of an accountable government in Northern Ireland, the North/South institutions between Northern Ireland and the Irish Republic, and the East-West Structures. The suggested arrangements contained neither a sound basis of fundamental principles nor any safeguards against the infiltration of the democratic system by

terrorist-related politicians. They were meant to pave the way for new constitutional arrangements that would make it possible for the IRA, through its political wing Sinn Fein, to achieve their political aim of a united Ireland slowly and gradually.

The multi-party negotiations that resulted in the Belfast Agreement in 1998 put in place a three-strand approach adopted in the Frameworks document. Strand One dealt with the 'Democratic Institutions in Northern Ireland' and the establishment of an Assembly and an Executive Authority. Despite the pledge of Office and the Code of Conduct there were no proper safeguards against terrorist-related politicians gaining access to any of these institutions, which would provide them with the means of pursuing their political aims. Strand Two dealt with the 'North/South Ministerial Council' (NSMC) with executive responsibility to develop cooperation and action in multiple areas within the island of Ireland through the implementation of an all-island cross-border body. The NSMC was to operate in conjunction with the Assembly. Again there were no safeguards to prevent terrorist-related politicians from taking part in the Council, giving them a direct opportunity to advance their political aims towards a united Ireland. Strand Three proposed the creation of the 'British-Irish Council' to promote the harmonious and mutually beneficial development of the totality of relationships among the peoples of the United Kingdom and the Republic of Ireland. The Agreement was a compromise between terrorist-related politicians and politicians abiding by the rule of democracy at the instigation and under the pressure of both, the British and Irish governments, with the support of the United States and the EU. Under the threat of a renewed terrorist campaign by the IRA, and with a false promise of a final settlement, the majority of the people of Northern Ireland voted for the Agreement on May 22, 1998.

Since the Belfast Agreement, two other agreements have come into existence, the St Andrews Agreement in 2006 [2] and recently the Hillsborough Agreement on February 5, 2010. [3] Both agreements fulfil the implementation of the Belfast Agreement without making any substantial modifications to it. The St Andrews Agreement merely introduced practical changes to the working of the institutions and paved the way for the devolution of powers from Westminster to the Northern Ireland Assembly and Executive. The Hillsborough Agreement completed the process of devolution by ensuring that policing and justice powers would be transferred on April 12, 2010 to the Northern Ireland Executive, which is under the influence of terrorist-related politicians.

The Unstable New Constitutional Arrangements and the Insecure Foundations for the Institutions

The Belfast Agreement was meant to provide Northern Ireland with new constitutional arrangements legislated in the Northern Ireland Act 1998. Unfortunately, (a) the insecure

foundations for the institutions may be underpinned by (b) a future Bill of Rights for Northern Ireland (see chart in Annex).

Under the d'Hondt system [4], terrorist-related politicians were given free access to the Assembly and to the Executive of Northern Ireland and subsequently to the North/South Ministerial Council. They were given the means of intensifying cooperation between North and South to create an ever closer union between Northern Ireland and the Irish Republic.

The first and predominant characteristic of the constitutional system created as a result of the Belfast Agreement is a compulsory partnership between democrats and terrorist-related politicians at all levels of the institutions, both in the Assembly and in the Executive, and consequently in the international NSMC. Moreover, once Ministers are appointed to the Executive, they operate independently as the head of their own department. The First Minister and deputy First Minister [5], who both have equal powers, cannot give specific directions to another Minister. The second prominent characteristic is that the Executive as a whole is not collectively responsible to the Assembly which has no powers to request and obtain the removal of the Executive by way of a motion of no-confidence as is possible in authentic democratic parliamentary systems. The principle of separation of power between the Executive and the Legislative is not implemented, and as a result there is no proper system of checks and balances. The third characteristic is the international NSMC, a body made up of Ministers from the Executive in Northern Ireland and the Irish government. Its purpose is to ensure cooperation between Northern Ireland and the Republic of Ireland on as many issues as possible affecting the economy of both. It is meant to progressively merge the two economies and move towards a closer union, with the aim of finally reaching the political union that terrorist-related politicians have been pursuing for the past 40 years.

The Northern Ireland Act 1998, amended by the Northern Ireland Act 2006 and the Northern Ireland Act 2009, favours the enemies of democracy and as such is in breach of the fundamental principles on which a democratic constitution and institutions ought to be based. The principle of consent of the majority of the people of Northern Ireland is inoperative, since the minority is determining the destiny of the process of integration between Northern Ireland and the Republic of Ireland. The principle of the territorial integrity of Northern Ireland is undermined by the compulsory collaboration with the Republic of Ireland. The principle of the solidarity of government does not apply since each Minister can make his/her own decisions despite the opposition of other members of the Executive. The principle of democracy being enforced through genuinely democratic institutions has been seriously compromised, since a vote by the majority of the people of Northern Ireland can never remove from office a terrorist-related politician who is by right a member of the Executive as a result of the d'Hondt system. The same principle is further undermined by the system of mandatory coalition, which excludes voluntary coalition and prevents the existence of an opposition. It appears that the majority principle, which applies in all democracies in the EU, has been made inapplicable in Northern Ireland since

the mechanism in place in the Assembly and the Executive give equal say to the minority, which can veto any decision made by the majority.

The breaches of these fundamental principles, which guarantee the proper functioning of democratic institutions, are the result of concessions made to IRA/Sinn Fein. The constitutional arrangements gave terrorist-related politicians what they required so as to manage and monitor the process of integration of Northern Ireland into the Republic of Ireland. The victims of IRA terrorism and their relatives, of whom many have never seen justice done, now experience the daily trauma of living under the authority of unrepentant terrorists, who openly and unashamedly pride themselves in the IRA.

The Future Bill of Rights for Northern Ireland

The Belfast Agreement prescribed the setting up of the Northern Ireland Human Rights Commission (NIHRC). It gave a mandate to the NIHRC and required it to

consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland ... These additional rights ... - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland.[6]

It should have been expected that the Bill of Rights would be based on reliable principles which would promote democracy and human rights against terrorism. Regrettably, the NIHRC sought to use its mandate with a threefold purpose; first to underpin the Belfast Agreement, particularly the inclusion of terrorist-related politicians in both the Assembly and the Executive of Northern Ireland, second to advance the elaboration of an all-Ireland Charter of Rights in view of eventually unifying fundamental rights in both jurisdictions to encourage people of Northern Ireland to join a united Ireland, and third to facilitate a future constitutional change when Northern Ireland is incorporated into the Republic of Ireland following a transfer of sovereignty.

The NIHRC proposals for a Bill of Rights outline principles which are inefficient to safeguard democracy and human rights against terrorism. Over the past nine years it has systematically failed to recognise that the main circumstance of Northern Ireland was and remains terrorism. This is the issue that had to be considered in order to enshrine new human rights and protect law-abiding people from terrorism, and to devise appropriate safeguards to ensure the protection of human rights, fundamental freedoms and democracy against terrorism. Having failed in both these requirements, new rights suggested by the NIHRC in its final advice were submitted to the Secretary of State on December 10, 2008. [7] Some of these rights have the potential to undermine democracy and human rights in Northern Ireland since they can be used to the benefit of terrorist-related politicians and terrorists in the future.[8]

The compromise between terrorism and democracy has granted terrorist-related politicians the unfettered right to be in control of the Northern Ireland Executive and Assembly. As a result, the very foundation of democracy and human rights in Northern Ireland has been corrupted, mainly to the prejudice of victims of terrorism. The proper function of a Bill of Rights should have been to set out democratic principles in order to remedy this situation rather than support it.

The New Legislation to Assuage IRA/Sinn Fein Demands

Since the Belfast Agreement was approved, there have been a number of legislative reforms introduced to satisfy IRA/Sinn Fein concerning equality, public processions, the criminal justice system, victims, policing, etc. We will only consider here (a) the discriminatory 50/50 legislation that applies to the recruitment into the police and (b) the definition of victims that equates innocent victims of terrorism and the perpetrators of terrorist acts.

The Enforcement of Discrimination through 50:50 Recruitment Legislation into Police

The temporary provisions of the Police (Northern Ireland) Act 2000 that relate to 50/50 recruitment were adopted following the recommendations of the Patten Report which stated that: “*The Independent Commission on Policing in Northern Ireland was set up as part of the Belfast Agreement of April 1998*”.^[9] This reform is the bitter fruit of the Belfast Agreement introduced through the Police (Northern Ireland) Act 2000 to satisfy terrorist-related politicians.

The provisions for 50:50 recruitment would have been in breach of the European Council directive establishing a general framework for equal treatment in employment and occupation that was being prepared and was eventually agreed to by the Council on October 17, 2000.^[10] The directive originated with the European Commission and there was no mention made of Northern Ireland. However, when it was referred to the Council for final agreement, in a matter of five days between October 12 and 17, 2000, the British government requested the insertion of provisions that would permit differences in treatment regarding the recruitment into the Police Service of Northern Ireland on the grounds that it was necessary to tackle the under-representation of one of the major religious communities. As a result, particular provisions for Northern Ireland were introduced in Article 15 of the Directive.^[11]

With the exemption granted by the Council, the British government could enforce legislation that creates a new recruitment process and which openly discriminates against certain applicants to the Police Service of Northern Ireland on the grounds of their religion. All candidates who wish to join the police service and serve as regular officers, and who reach a specified standard of merit in the selection procedure, are placed in a pool from which an equal number of Roman Catholics and non-Roman Catholics are then drawn for appointment. One half must be Roman

Catholic and the other half “Protestant or undetermined”. The purpose of this legislation is to increase the number of Roman Catholics within the police service of Northern Ireland, but in practice it has already discriminated against hundreds of Protestants who reached the specified standards and should have been able to join the Police Service of Northern Ireland (PSNI).

The failure of this legislation has been that it does not address the real cause of under-representation of Roman Catholics in the Police Service of Northern Ireland, which stems from IRA terrorist threats being exercised in the past on the Roman Catholic population to prevent young people from joining the police force.[12] It also reduces the number of recruits that should be enrolled, since there are not enough Roman Catholics applying and yet this cannot be compensated by applicants from other religious backgrounds because of the limited number imposed by the 50:50 recruitment policy. This has contributed to undermining the capacity of and confidence in the PSNI to achieve its policing objectives.[13]

The Definition of Victim that Equates Innocent Victims of Terrorism and Perpetrators

The Victims and Survivors (Northern Ireland) Order 2006 defines a victim as “*someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident*” as well as “*someone who has been bereaved as a result of or in consequence of a conflict-related incident*”.[14] A conflict-related incident, according to the Order means, “*a violent incident occurring in or after 1968 in connection with the affairs of Northern Ireland*”.[15] The key element of this definition is of course ‘conflict-related incident’. It supposes that there has been a violent ‘conflict’ or a kind of ‘war’ in Northern Ireland and that all those affected by it should systematically be classified as victims.

The definition of victim is yet another bitter fruit of the compromise between terrorism and democracy. It leaves aside any reference to the terrorist campaign of the past 40 years and to the continual violation of criminal law and human rights law by terrorist organisations dedicated to re-writing the past to suit their political aims. The actual terrorist campaign against the state and the law-abiding people of Northern Ireland has been renamed ‘conflict’, a term that terrorists have used in order to be treated equally with members of the security forces and to eliminate the distinction between right and wrong.

The definition of victim provided in Northern Ireland legislation has raised serious concerns, even outrage, and rightly so, on the part of innocent victims of terrorism. Several measures have been taken or suggested on the basis of this definition, which demonstrates that perpetrators of acts of terrorism and innocent victims are put on an equal footing and proves its adverse impact. On the day Mrs McBride, the sister of an IRA terrorist, lawfully killed by the security forces, was appointed by the Office of First Minister and deputy First Minister (OFM/DFM) as one of the four Victims’ Commissioners for Northern Ireland, it was published on the First Minister’s

website that “*her brother had been killed in active service*”.[16] In the same vein, the Consultative Group on the Past proposed that a “recognition payment” of £12,000 should be made to all the nearest relatives of people who died during the terrorist campaign, whether civilians, police officers, soldiers or terrorists.[17]

This definition has given terrorists and their families the same status and rights as innocent victims of terrorism. Such an amalgam should never have been tolerated and requires that the compatibility between the definition of victim given in Northern Ireland legislation and that to be found in international legal instruments be analysed so that the elements of a proper definition of victim of terrorism can be established.

Use of ECHR to Undermine the British State

While there is no record of any successful application lodged by innocent victims of terrorism or their relatives before the European Court of Human Rights, the IRA terrorists and their relatives have effectively used the ECHR against the United Kingdom. It has become a power tool in order to undermine the respectability of the British security forces and breathe life into terrorist anti-state propaganda.

Terrorists engaging in the most heinous crimes with total disregard for the human rights of their victims have applied to the ECHR, alleging that they were victims of the state. In several cases the European Court was asked to consider issues that were submitted on the grounds of the right to life (protected by Article 2 of the Convention), such as: the shoot-to-kill policy against IRA terrorist suspects both in Northern Ireland and abroad; the investigating procedures in relation to the deprivation of life following a number of cases involving terrorist suspects being killed by security forces; and the use of lethal force by security forces against terrorists.

Unfortunately, some judgements rendered by the Court have served the purpose of terrorists against the state. In the case of *McCann and Others v. United Kingdom*, [18] the Court reviewed the operation that led to the shooting by the British Special Air Service (SAS), of well-known terrorists who were about to detonate a deadly bomb in the centre of Gibraltar in March 1988. By 10 votes to nine the Court decided that the authorities could have controlled and organised the operation differently to prevent the use of lethal force and that as a result Article 2 had been violated. However, the nine dissenting judges came to the logical and well-balanced decision that the use of force by the authorities against the suspects for the purpose of defending innocent persons from unlawful violence was absolutely necessary and proportionate given the circumstances.

Decisions such as the one mentioned above create confusion as to what the state should do to protect its citizens from terrorist suspects and attacks. It also generates distrust on behalf of genuine victims of terrorism in relation to human rights legislation that is perceived as a means

for terrorists to justify and/or cover up their actions, while intensifying the propaganda to undermine the state authorities.

Recommendations made to the European Commission

An analysis of what has occurred in Northern Ireland over the past 40 years has highlighted the extent to which democracy, human rights and fundamental freedoms have been undermined and destroyed by terrorism throughout Northern Ireland.

It appears that serious crimes that could be classified as crimes against humanity have never been investigated or prosecuted. The constitution of Northern Ireland has been replaced with new arrangements that allow terrorist-related politicians to take part in and even control the working of the Assembly and the Executive, the proposed Bill of Rights for Northern Ireland is designed to underpin the political agreement and strengthens the position of terrorist-related politicians within the institutions of Northern Ireland, while further restricting the capacity of the security forces to combat terrorism. The devolution of policing and justice will complete the process of handing over de facto control of the institutions to IRA/Sinn Fein, enabling them to achieve their political aim of a united Ireland. The legislation that applies to policing, the education system, the right to freedom of peaceful assembly and other issues concerning victims, favours terrorists to the detriment of law-abiding citizens and the innocent victims of terrorism.

Meaningful measures to prevent the progress of terrorist policies and interests that jeopardise the future of democracy in Northern Ireland and the rest of Europe have not yet been taken by the British authorities, the EU or the Council of Europe. Unfortunately, ECHR case law sometimes delivers a confusing message that requires clarification and is often used by terrorists as a means of furthering their propaganda against the British state.

In view of the above, the following recommendations have been respectfully submitted to the European Commission:

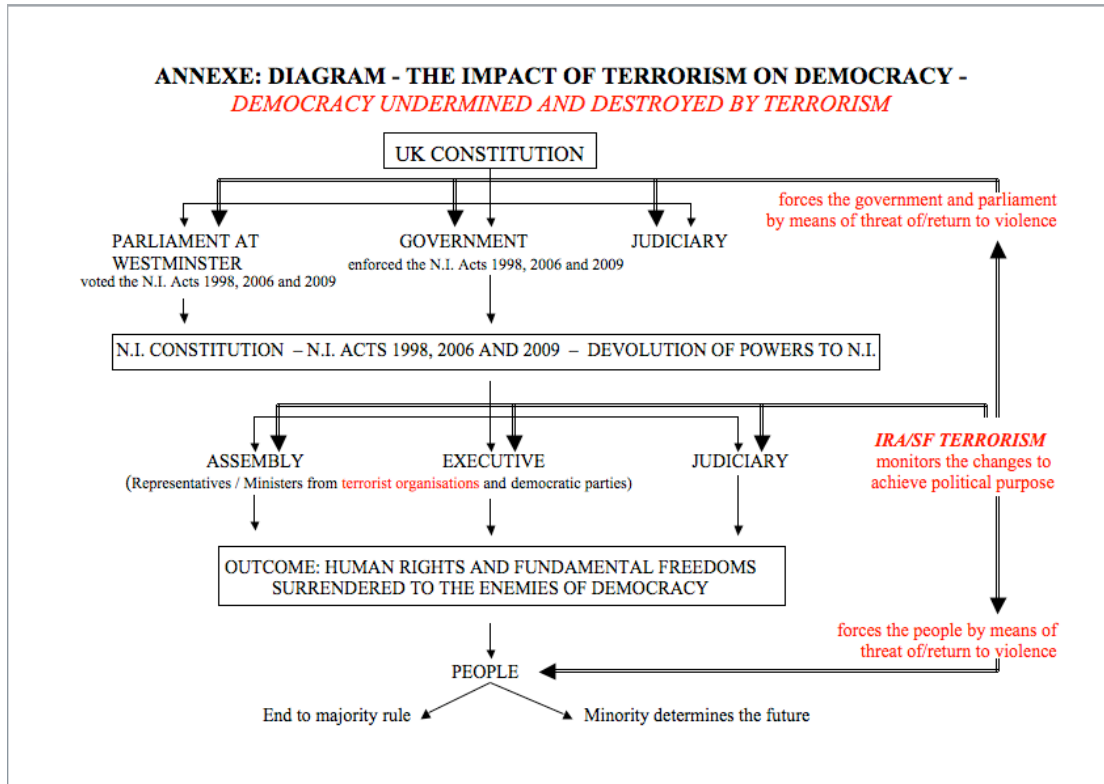
1. The findings of project MONNET could be compared and contrasted in association with the European Network of Victims of Terrorism (ENVT) with other areas affected by terrorism within (and outside) the EU.
2. Groups of victims of terrorism should be encouraged to promote human rights and democracy within the EU and raise awareness against terrorism.
3. The Northern Ireland experience should be used to help provide a more precise definition of terrorism at European level.

4. The Northern Ireland experience should be used to provide a definition of victim of terrorism at European level.
5. A principled basis upon which the European Network of Victims of Terrorism could advance in carrying out its functions needs to be determined.
6. Measures should be taken to oppose any indirect support or encouragement to terrorism and to promote human rights and democracy throughout the EU.
7. The present support for the new arrangements in Northern Ireland should be reconsidered, suspended and replaced by measures that effectively promote democracy and human rights throughout the EU.
8. Any indirect financing of terrorism by the EU should be reconsidered and redirected towards the needs of genuine victims of terrorism.
9. The Council of Europe should be encouraged to strengthen its stand against terrorism.
10. The ECHR case law should be carefully analysed and the information resulting from it disseminated to the general public.
11. Support and funding should be provided for further test cases to be submitted to the ECHR in order to develop case law that protects and supports innocent victims of terrorism.
12. Encouragement should be given to the European Court of Justice to refer to and apply the ECHR case law in its decisions.

Conclusion

Although the EU has outlined the objectives to be achieved, it appears that the strategy to combat terrorism needs to be more efficiently implemented within the member states at local level in order to be successful. This is an issue that needs to be addressed urgently so that the fight against terrorism does not remain the task only of national authorities, but may be intelligently supported by the European population at large.

Annex:



About the author: Axel Schmidt is a law graduate from the University of Paris 2 (ASSAS) (LL.B., LL.M. (Hons) and Dip.S.S.S.L.). He was also trained in Business Management at the Ecole Supérieure de Commerce de Paris (Group E.S.C.P.). He was a training consultant for French companies and a lecturer at university and in the Institut Supérieur du Commerce de Paris. In 2001, he formed Schmidt Consulting in Northern Ireland which provides advice in the field of human rights law, assistance in legal proceedings in domestic courts and the European Court of Human Rights, facilitation services between private and public bodies, and lecturing. He was the legal consultant for project MONNET which was supported and financed by the European Commission – Directorate Justice, Freedom and Security.

Notes

[1] Out of 3,365 people who were killed between 1966 and 2001, the IRA was responsible for 1,778 victims; the IRA caused the greatest number of victims and the most damage to property and businesses (David McKittrick, Seamus Kelters, Brian Feeney and Chris Thornton. *Lost Lives*. Edinburgh, Mainstream Publ. Company, 1999, pp. 1497 and 1504).

[2] Agreement reached at St Andrews (Scotland) after three days of negotiations between October 11 and 13, 2006; accepted by all Northern Ireland political parties on November 10, 2006.

- [3] After ten days of negotiations between the Democratic Unionist Party (DUP) and Sinn Fein, an agreement was reached at Hillsborough Castle (Northern Ireland) on February 5, 2010.
- [4] The d'Hondt system is a proportional system of representation that is used for allocating seats in party-list elections.
- [5] It must be noted that both First Minister and deputy First Minister have absolutely equal powers, which explains why 'deputy' is always written with a small 'd' in legislation.
- [6] The Belfast Agreement, Strand Three, 'Rights, Safeguards and Equality of Opportunity', p.16, para. 4.
- [7] 'A Bill of Rights for Northern Ireland, Advice to the Secretary of State for Northern Ireland', December 10, 2008.
- [8] The proposed rights would, for example, imply that terrorists would benefit from the clauses on equal treatment and non-discrimination, according to which they should not be discriminated against on the grounds of their criminal convictions.
- [9] 'A new beginning: Policing in Northern Ireland', published on September 9, 1999, page 1 para. 1.1.
- [10] Council Directive 2000/78/EC of November 27, 2000, establishing a general framework for equal treatment in employment and occupation in accordance with Article 13 of the EC Treaty.
- [11] Council Directive 2000/78/EC of November 27, 2000, chapter III, Particular Provisions, Article 15 Northern Ireland.
- [12] Submission on the Police (Northern Ireland) Act 2000, Review of Temporary Provisions by the Ulster Human Rights Watch to Mrs Jane Kennedy, Minister of State for Northern Ireland, dated January 15, 2004.
- [13] Her Majesty's Inspector of Constabulary 2001/2002 Report by Sir Dan Crompton CBE, QPM, CI Mgt, Northern Ireland Policing Board, 'Monitoring PSNI Compliance with Human Rights Act 1998 Report', Dec.2003, p. 25.
- [14] Victims and Survivors (Northern Ireland) Order 2006, Section 3(1).
- [15] Victims and Survivors (Northern Ireland) Order 2006, Section 2 (2).
- [16] www.ofmdfini.gov.uk, June 2, 2008.
- [17] 'Report of the Consultative Group on the Past', 23 January 2009, pp. 90-92.
- [18] European Court of Human Rights, Grand Chamber, Judgment McCann and others v. the United Kingdom, September 5, 1995 (A324).