

Recent Developments in the law of England and Wales

Recent laws and proposals

1. Legislation has recently been introduced which affects criminal justice procedure in the UK. The Criminal Evidence (Witness Anonymity) Act and the Criminal Justice and Immigration Act are of particular importance. There are also proposed changes to our Criminal Justice Act, 1984 (PACE) which affects Police powers. I cannot tell you about these in 5 minutes, nor have the acts been law long enough for their effectiveness to be evaluated.

Particular problem

2. What may be of more importance so far as fair trials are concerned is what was touched upon in Professor Holger Matt's Editorial to the ECBA September Newsletter, where he said that we all experience every day the difference between the formal enunciation of the 'fair trial' principle and its effect in practice.

3. That is precisely the problem in the UK, and many people, particularly defence lawyers, have become increasingly concerned about the Government chipping away at minimum standards and the Human Rights Act. Only last week, on a weekly BBC Radio programme, 'Any Questions', where an audience puts questions to a Panel, (mainly consisting of politicians from all major parties and other notables), a well-known author, when discussing the intended introduction of compulsory Identity Cards, remarked " We British must start standing up for our freedoms, which are being rapidly eroded".

4. Whilst the Government pays 'Lip Service' to the Human Rights Act, its main priority seems to be to please the people at all costs, in pursuit of its "tough on crime, tough on terror" image, by bringing in legislation which it considers popular and, above all, ensuring that anyone charged with a criminal offence is convicted, particularly if the charge is serious. Time and time again in recent years the Government has given the appearance of reversing the presumption of innocence.

5. This apparent attitude was highlighted when only two weeks ago, after a very long high-profile Terrorist case in which 8 men were accused of conspiracy to murder by setting off explosive devices on aircraft, the Jury convicted 3 men of conspiracy to murder (carrying life imprisonment), though not specifically on aircraft; they failed to reach a verdict on 4 others and one was acquitted altogether. There was nothing particularly unusual about such a verdict. 3 would be sentenced to life imprisonment, 4 would probably be re-tried and the one acquitted would go free, an innocent man.

6. The Press, however, went almost hysterical. The Jury were blamed, the Judge was blamed, and things were said which would clearly prejudice a fair re-trial of the 4 upon whom the Jury could not agree. Little was said about the fact that the verdicts were probably the result of the evidence not being of sufficient strength, and the Jury heeding the presumption of innocence. The Establishment was clearly furious that the Jury had had the nerve not to convict men who had been charged with serious criminal offences.

7. The Press had apparently seized upon sly implications by anonymous people not brave enough to disclose their names. They were variously referred to as "counter terrorist officials", "investigators", "a Whitehall Source", "a source close to the case", "one senior Whitehall official", "Police sources", "a security source", "a British Government source", etc, etc. They were attributed as expressing such things as "dismay, disbelief and astonishment", "Britain's OJ Simpson verdict", and "a seemingly perverse verdict", among many other outrageous comments.

8. The Press went in many instances so far as to be in contempt of court which seriously prejudiced the right to a fair trial or re-trial and the presumption of innocence. One newspaper even queried whether "our standards of proof are too high to protect the public from terrorists?".

9. Several eminent criminal lawyers wrote letters to the Press querying whether a law of Contempt of Court still existed. This at least caused the Attorney General to reply by letter which simply failed to answer the questions and concerns at all. She appeared clearly to be saying what it was politically expedient to say.

10. Even at the time of the defendants' arrests and before charge, the then Home Secretary, John Reid, was quick to remark "Police are confident that the main players have been accounted for" and "we may have to modify some of our own freedoms in the short term...". So much for the presumption of innocence! In fact there were 24 people arrested, and only 8 even charged. After the verdict the police and the Crown Prosecution Service indicated immediately (in terms that might prejudice the re-trial they are now seeking) that they considered the defendants guilty of plotting to blow up aircraft, regardless of the verdicts of the Jury.

11. When I was a young barrister, the newspaper editors would have been held in contempt of court. It is reminiscent of a case in France in the 1950s when a newspaper's headline announced "Vile Assassin arrested" to be followed, after the man had been found Not Guilty at a trial, by "Vile Assassin acquitted"!

12. This recent Terrorist Trial is an example of the sort of incident which some feel has been happening all too often in recent years. Fortunately, we have our Court of Appeal, House of Lords and Juries, none of whom is politically appointed, and who seem still to desire a fair trial and/or the reversal of a verdict if the trial was unfair or the law was not properly followed. Successive Home Secretaries have heavily criticized judges and juries because they have either overturned judgements or disagreed with convictions.

In Absentia Judgements

13. The UK's support for the new European In Absentia Judgements proposals (mentioned in the ECBA September Newsletter) also highlights the erosion of the right to a fair trial. Again, when this was queried in letters to the Press, the Attorney General replied and answered the complaints by simply misrepresenting the proposals. The Attorney-General and the Solicitor-General are of course political appointments.

Mental Hospitals and Prisons

14. In July the new Mental Health Act was brought in, which will have the effect of far more people being 'locked up' and most lawyers feel is non-compliant with the European Convention of Human Rights. The old 1983 Act is the most challenged Act in the European Court of Human Rights. Why the legislators could not have followed the 2003 Scottish Act, which does comply, is a mystery.

15. This idea of locking more and more people up, no doubt pursuing the image of "tough on crime", has been frequently demonstrated in various regulations in the last few years, although in general the trial judge is left with some discretion to pass whatever sentence within the law he feels it is just to pass. In addition many members of the Government have been very keen to extend the maximum period of detention without charge in Terrorist cases, even though the present time limit seems so far to have sufficed.

16. Paradoxically, this desire to increase sentences, with which many judges have felt constrained to go along, has caused the prisons to become vastly overpopulated, so much so that the Government has had to bring in an emergency early release scheme for non-violent offenders. In the first year of this scheme 31,500 criminals in England and Wales left jail early.