



The Association of the Bar of the City of New York

Office of the President

PRESIDENT

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The Rt. Hon. Tony Blair
Prime Minister
10 Downing Street
London, United Kingdom SW1A 2AA

Dear Prime Minister Blair:

I am writing on behalf of the Association of the Bar of the City of New York regarding an inquiry into the murder of Patrick Finucane. The Association urges your government to establish a transparent and independent public inquiry that would satisfy the United Kingdom's obligations under Article 2 of the European Convention on Human Rights.

The Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials, principally from New York City but also from throughout the United States and from 50 other countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world.

The Association has been monitoring human rights conditions in Northern Ireland for nearly 20 years. During this time, the Committee on International Human Rights has conducted three missions to Northern Ireland to consider, among other issues, the status of investigations into past crimes and, in particular, the murder of solicitor Patrick Finucane in 1989. Although we commend your government's stated intention to establish an inquiry in Mr. Finucane's case, we write you now to respectfully urge you to conduct an open and transparent public inquiry in this case pursuant to the Tribunals of Inquiry (Evidence) Act of 1921, rather than under the Inquiries Act 2005. Indeed, we believe that an inquiry conducted pursuant to the Inquiries Act 2005 would violate Article 2 of the European Convention.

Of particular concern, the Inquiries Act 2005 gives a government minister the power to retain control over the entire administration of the inquiry. The minister could decide whom to appoint to the inquiry panel, the terms of reference for the inquiry, and whether the public will have access to the inquiry and the resultant findings of the panel. We believe that an inquiry conducted under such conditions would lack the requisite independence from the forces under investigation and would not allow for sufficient public scrutiny, in violation of Article 2 of the European Convention. The European Court has addressed similar concerns with respect to earlier investigations into the Finucane case (the police investigation, the inquest and the Stevens inquiries) and found that those investigations did not comply with Article 2. *See Finucane v. U.K.*, 37 Eur. H.R. Rep. 29 (2003).

Both Judge Peter Cory and Lord Saville have voiced strong objection to the Inquiries Act 2005 and to giving a government minister such control over inquiries. Indeed, both Judge Cory and Lord Saville have said that they would advise against any judge accepting an appointment to an inquiry conducted under the terms of the Inquiries Act 2005.

In *Finucane v. U.K.*, the Court found that for an official investigation to be effective under Article 2 in a case such as Mr. Finucane's – an alleged unlawful killing by state agents – it must be, *inter alia*, independent, prompt, and subject to public scrutiny, and the interests of the victim's family must be safeguarded. In light of this judgment and the government's ongoing responsibility to comply with the European Convention, an inquiry into Mr. Finucane's murder should be wholly independent from the government and, upon its establishment, panel members as opposed to government officials should determine the terms of reference, the scope of the inquiry, and public access to the process.

Although the 1921 Act was repealed by the Inquiries Act 2005, section 44(5) authorizes inquiries to continue under pre-existing legislation where they were established prior to the coming into force of the Inquiries Act 2005. An inquiry has not yet been initiated in the Finucane case, but the British government agreed in 2001 to conduct an inquiry if Judge Cory concluded that one was justified in the case. In the 2004 report published after his investigation into Mr. Finucane's killing, Judge Cory recommended the establishment of an inquiry consistent with provisions of the 1921 Act. The government again promised an inquiry in September 2004, prior to the coming into effect of the Inquiries Act. As a result of these events, the Finucane family has a legitimate expectation that, if a public inquiry were to be held, it would be held pursuant to the provisions of the 1921 Act. To do otherwise would fall short of satisfying Judge Cory's requirements for a public inquiry, as well as the government's commitments in the case and its obligations under Article 2 of the European Convention.

For these reasons, we respectfully urge the government to now undertake a public inquiry under the 1921 Act in order to comply with Article 2 of the European Convention. Sixteen years after Mr. Finucane's death, we believe that such an inquiry is

necessary to uncover the truth in the case and build public confidence in the system of justice, and we strongly recommend the government avoid any further delay.

Thank you for your time and attention to these matters.

Sincerely,

Bettina B. Plevan
President
Association of the Bar of the City of New York

cc: Lord Goldsmith QC
Lord Falconer of Thoroton
UK Ambassador in Washington
US Special Envoy, Mitchell Reiss.

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