Members of The Haldane Society along with lawyers from around the world, including France, Italy, USA, South Africa, Vietnam, Philippines, Haiti, Costa Rica and Spain, all took part in a week long delegation to Gaza at the end of September 2012.

The primary aim of the delegation was to show solidarity with the Palestinian people in their struggle for self-determination and to call for an end to the illegal Israeli occupation. Through meetings with Palestinian civil society the delegation also aimed to learn first hand about the actual situation on the ground.

The IADL met with the Gazan Prime Minister, Minister of Justice, members of the different political factions as well as various human rights organisations and UN agencies. Through these meetings the delegation’s members became aware of the current political, economic and social situation in Gaza.

What rapidly became clear is that the coming year will see an alarming deterioration in the lives of the people of Gaza and the emergence of a humanitarian crisis in the area. It was also obvious that despite the occupation being the root and direct cause of this tragedy, the Israeli army and authorities continue to act with almost complete impunity.

With the above in mind, a conference entitled ‘Setting the Agenda: Accountability for International Law Violations in the Occupied Palestinian Territory’ was held on 27th September 2012 with various members of Palestinian civil society in attendance. Topics included accountability, the closure of Gaza and the plight of political prisoners in Israel.

On the last day of the delegation the group published a declaration summarising its experiences and intended future projects of solidarity. In particular the declaration called for ‘setting up and assisting in the coordination of an international network of jurists who stand in solidarity with Palestinian people… using all national and international legal instruments available to challenge Israeli impunity, end the occupation, closure and consequent human rights violations.’

The declaration can be seen at www.pchrgaza.org

For more information regarding the IADL please visit www.iadllaw.org

Carlos Orjuela

How to beat the ‘Wallace courts’


We heard that the Government’s intention is to introduce closed material proceedings (CMPs) into civil claims for damages and judicial review so that cases where they deem the evidence harmful to national security can remain secret. The Justice & Security Bill once passed, will introduce CMPs and provide the Government with a mechanism not to disclose evidence or their defence to claimants alleging State complicity in international crimes such as rendition and torture. A special advocate representing the claimant would see the Government’s evidence but the claimant and their lawyers would not. The Government state they are presently forced to settle for large sums of money rather than let the evidence become public and risk ‘British lives’ and national security, CMPs they argue would resolve this problem.

Dinah Rose QC described how the principle of natural justice is to know the case against you and through an adversarial trial hear the other side’s evidence which can be tested under cross examination. Under CMPs the special advocate is unable to call the evidence and the claimant would be unable to rebut what they have no knowledge of. A fundamental process of the legal system is to advise a client on the merits of their case and the funding options available and the associated risk of taking a case. A lawyer cannot advise on these matters if they do not know the case against the client or the Government’s defence. Further, judges will have to pronounce on CMPs and asked how this would work in practice if we lose sight of the judge’s reasoning.

We heard from Richard Norton-Taylor that the UK is reliant on information given to them by America and there is huge pressure not to disclose it. He said that the UK Government perceives disclosure as risking the ‘special relationship’ and as such that in itself is a national security risk. He said that there was strong evidence of collusion and torture by the British and that CMPs will prevent journalists publicising cases. He said that had the bill already been passed we would never have heard about the families that were taken by rendition to Libya.

Saghir Hussain described how the equality assessment demonstrates that CMPs will impact men, those of Asian origin and those whose religion is Islamic. Saghir compared the extradition cases of Talha Ahsan and Gary

October

11: Joaquim Barbosa is appointed president of the Supreme Court of Brazil, becoming the first black person to hold the post. He was elected by his fellow judges. He was born into a poor family. While studying law in Brasilia he worked as a cleaner in one of the city’s courts. He was first appointed to the Supreme Court in 2003 by then President Luiz Inacio Lula da Silva.

24: Female workers formerly employed by Birmingham City Council win a pay claim in the Supreme Court. The effect of the decision was said to in effect extend the time workers have in which to bring equal pay claims from six months to six years.

24: The Attorney General, Dominic Grieve, warns David Cameron that ignoring the European Court of Human Rights’ decision on prisoner voting risks sullying Britain’s reputation as an advocate of human rights. Cameron had said that prisoners would not get the vote under his Government.

26: Two gay Jamaicans launch legal action against laws criminalising homosexuality in Jamaica. The case will be heard in the Inter-American Commission but as Jamaica is not a full member any ruling is not binding.

Socialist Lawyer February 2013
A new breed of Judge?

Jonathan Sumption’s appointment in January 2012 to the Supreme Court was a surprise. He was the first English barrister in decades to have been recruited to our top court without any previous period of full-time judicial service. Sumption is also the first judge in living memory to have had his appointment commented on by another senior Judge, Sedley LJ, in the London Review of Books.

Part of the Sumption controversy rests in his own response to promotion, which was to give a public lecture called ‘Judicial and Political Decision-Making: The Uncertain Boundary’ criticising the previous judiciary for their supposed intervention in areas best left to Parliament. ‘English public law has not developed a coherent or principled basis’, Sumption told his listeners ‘for distinguishing between those questions which are properly a matter for decision by Parliament and the electorate, and those which are properly for decision by the courts’. The key task for the Judiciary, he argued, was to cease using a judicial position to rewrite the law, and to leave politics to Parliament.

Since his appointment, Sumption’s most controversial decisions have been in employment law. His first significant minority decision, Birmingham CC v Abdulla, arose in an equal pay case. The claimants brought an equal pay case in the High Court outside the ordinary employment tribunal time limit of six months but within the civil limitation period of six years. The employer defended the claim on grounds of jurisdiction. Until this case, it had been the established understanding of employment lawyers that equal pay claims, unlike all other individual claims, could be brought in either the civil courts or the Tribunal. Indeed this was buttressed by the clear words of section 2(3) of the Equal Pay Act 1970, which enables claims to be redirected from the tribunal to the civil courts if it would be more convenient to hear them there.

Birmingham drew an analogy with the ‘forum conveniens’ rules that operate in international law. We do not usually allow magnates with a strictly domestic dispute having no connection to Britain to sue in this country; the UK courts are not the ‘convenient’ venue. Birmingham argued that the same arguments applied to equal pay claims, which should always be heard in the Tribunal as the specialist court. Unsurprisingly, judges found this analogy a poor one. The reasons why non-UK cases are not heard in the UK courts are expense, lack of knowledge of the law and lack of authority; none of these problems applies to the High Court hearing employment claims. Accordingly, Birmingham’s appeal failed at each of the three tiers of the judiciary who heard it.

Sumption is an extremely bright judge, and had to find some reasons to justify a decision in favour of the employer. He held that: ‘The view that court proceedings in support of an equal treatment claim should rarely or never be struck out where they were time-barred in an employment tribunal has the effect of making the statutory protection of the employer available to him only at the option of the employee’. In other words, the protection of the employer through the Employment Tribunal’s narrow time limits is an overriding principle – it, and the employer’s general interests, for which it stands – should override anything, even the plainest, unambiguous words of a statute.

In December 2012, a further split Supreme Court decision again concerned the rights of employers. In Geys v Société Générale a worker, Geys, was summarily dismissed by his employer in breach of his contract. He was later paid the notice pay to which he was entitled. His notice pay was however paid late, entitling him to further bonus payments for work he had done over the previous two years.

It has for 30 years been settled law that where an employer repudiates a contract of employment, this repudiation takes effect only from the moment when the employee accepts it. Sumption held that the common law should be rethought to prevent employees benefiting. It was ridiculous, he maintained, to think that an employer might be required to keep a worker in employment when that worker did not have any duties. But as any experienced employment lawyer could have told Lord Sumption, there are circumstances where an employer keeps a worker in employment, albeit without giving them any duties, and the employee is deemed to remain in employment – e.g. if she is incapable of work due to sickness or injury, see section 212(3)(a) of the Employment Rights Act 1996.

Again, we see an extremely bright Judge trying to nudge his contemporaries into decisions which would alter the texture of settled areas of law – with no apparent motive other than an overriding need to promote the interests of the employers.

In both cases, Sumption was part of a losing minority. But readers should watch him with care: the anxiety must be that the legal left now faces a better-entrenched, more political antagonist than any we have known in 30 years or more.

David Renton

Socialist Lawyer February 2013

30: A Spanish judge launches a prosecution of 7 agents from the Chilean intelligence agency during the Pinochet dictatorship for the kidnap, torture and murder of the Spanish citizen and UN diplomat Carmelo Soria Espinoza who was working in Chile when he was kidnapped by security agents as he was leaving work on 14th July 1976.