

FROM THE OMBUDSMAN

22 August 2014



PCC 144062 Mr Adam Wagner

Thank you for forwarding the above complaint from Mr Wagner about an article headlined 'It's time to stop crazy human rights rulings from European judges', dated 27 July.

I wonder why it has taken Mr Wagner so long to complain about this story. There were no complaints about it at the time of publication and the EU Commission are eagle-eyed about potential errors.

This story was originally planned as a spread, with case studies, a news story and an opinion piece by a politician. It ended up as 3/4 of a page, dominated by the MP's opinion piece, with the news story used as a stand first and abbreviated case studies.

It is significant that this is a regular slot given to politicians of all persuasions to express their personal opinions on any topical subject.

It is meant to be provocative and take sides. The article briefly recounted some of the controversial cases from the past that have been written about and broadcast on radio and TV many times. It does not contain "significant inaccuracies" as Mr Wagner maintains but addresses the standpoint of the MP concerned, whose views on human rights "industry" clearly differ from Mr Wagner's own views.

1. On Mr Wagner's first point, he says that the MP who wrote the main piece, Chris Heaton-Harris, was inaccurate in saying the original European Convention on Human Rights was designed to counterbalance the dictatorships, in Nazi Germany and in the Soviet Union. Mr Wagner takes issue with the MP's statement that the ECtHR was designed to counterbalance dictatorships in Nazi Germany and in the Soviet Union. But part of his argument is that the ECtHR was, to use the complainant's own words "drafted in order to protect Western European (sic) against Communism and to prevent the rise of other illiberal regimes." By mentioning Communism and illiberal regimes himself, he is contradicting his assertion that it was not about the Soviet Union.

Mr Wagner gives us a legalistic explanation of the history of the convention. But he is being selective in what he has plucked out of the article. I believe that anyone reading the seven paragraphs following the "offending" sentence in Mr Heaton-Harris's piece would agree it gives a fair assessment of why the convention was set up.

2. Mr Wagner says it is was inaccurate to say the European Court of Human Rights stopped a judge imposing a whole-life tariff on Ian McLoughlin because a hearing the following year made it clear he could have done.

In fact the judge did refuse to give him a whole life tariff. In other words it was because of the ECtHR ruling that he acted in this way. There was clearly no space in the layout to go into all this intricate detail about legal cases that followed. The row over this was well covered at the time. Here is a link to one of many articles still available and it echoes The Sun article: <http://www.dailymail.co.uk/news/article-2470058/Triple-killer-Ian-McLoughlin-murdered-Good-Samaritan-jailed-40-years.html>

The BBC website's coverage of the Ian McLoughlin case. Paragraph 7 says: "Sentencing McLoughlin at the Old Bailey, Mr Justice Sweeney said he was barred from passing a whole-life term because of a European judgment that those sentences were in breach of human rights."

Here is link to the full report: <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-24608144>

Paragraph three of the Daily Mail report said: "But Mr Justice Sweeney yesterday said it was not appropriate to hand out a whole life sentence because of a European Court of Human Rights (ECtHR) decision earlier this year."

Link to full report: <http://www.dailymail.co.uk/news/article-2470058/Triple-killer-Ian-McLoughlin-murdered-Good-Samaritan-jailed-40-years.html>

It is true that in February 2014 the Court of Appeal ruled that the sentence was unduly lenient. But nevertheless, the judge who refused to impose a whole-life tariff did so because of ECtHR rulings. Our brief account of the case was accurate and while it did not cover subsequent hearings it demonstrated how the European court is having an effect on rulings made in our court, which was the purpose of the whole article.

3. Mr Wagner says a convicted paedophile was paid £3,180 and not £5,496 as stated in the article. In the original copy, David Wooding stated that it was £5,496 in compensation, expenses and legal costs.

This was telescoped by the sub-editor to read "was awarded £5,496", for reasons of space. However, in the first case study of the six published, the phrase "in compo and costs" was left in, so it would be fair to assume the figure for the subsequent ones would be the same.

Other reports all quote the total award as £5,496.

The BBC goes even further and says £6,000 in para 4 of this report. <http://news.bbc.co.uk/1/hi/england/dorset/4309203.stm>

It does qualify it lower down by splitting the costs, damages and expenses - but this is a lengthy report and not a two-par case study (as in The Sun on Sunday's article) to illustrate an opinion piece.

The Daily Telegraph quote the total £5,496 award in full, too. <http://www.telegraph.co.uk/news/uknews/1484817/Victims-fury-at-payout-to-paedophile-barrister-for-distress.html>

See also this one: <http://google-law.blogspot.co.uk/2013/02/paedophile-barrister-without-any.html>

4. Mr Wagner says that killer teenager Chindamo was allowed to stay in Britain because he is Italian and EU free movement rules bans his deportation. However, Mr Chindamo's right to family life was cited at an immigration tribunal as a reason for the decision. It was published at the time and has been since. The Sun article stated; *"Ministers wanted to deport him but a hearing ruled his right to family life prevents him being kicked out."* This is correct. Here is a link to coverage: <http://www.dailymail.co.uk/news/article-2029483/Philip-Lawrence-killer-Learco-Chindamo-cleared-cashpoint-robbery.html>

Similarly, The Guardian reported how a senior High Court judge turned down a government request to overturn the ruling of an asylum and immigration tribunal to block his deportation. It says: "Chindamo won an appeal against deportation after his lawyers argued that sending him to Italy, where he was born, would breach his human rights."

Link to full

article: <http://www.theguardian.com/uk/2007/oct/31/humanrights.immigrationpolicy>
His EU citizenship is an issue, but it is correct to report that a hearing ruled his right to family life prevented his deportation.

I do not believe that in this instance, the Code has been breached.

Yours sincerely,

A handwritten signature in black ink that reads "PK Kennedy". The letters are cursive and somewhat stylized.

Philippa Kennedy OBE
Sun Ombudsman