

Kelly and Others v. United Kingdom (Application no. 30054/96)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 4 August 2001

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697330&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

2) Facts

The Applicants, next-of-kin of nine men killed during a security force operation at Loughgall on 8 May 1987, allege that their relatives had been killed unjustifiably, without any attempt being made to bring them before a court, that this disclosed discrimination, and that there was no effective remedy available to address their complaints. They allege violation of Articles 2, 6, 14 and 13 of the Convention. This case was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force.

Following a briefing that there was likely to be a terrorist attack on Loughgall station of the Royal Ulster Constabulary (the RUC) in County Armagh on 8 May 1987, twenty four soldiers and three RUC officers located themselves around the station. Between 7:15 and 7:30 p.m., a blue Toyota Hiace, reported hijacked, parked outside the station. At least five men emerged and began to shoot. Soldiers returned fire. Police had also been notified that a digger had been stolen and loaded with a bomb containing 300-400 pounds of explosives. When the digger drove through the front gate of the station, a soldier fired a short burst at the driver. The digger stopped and shortly afterwards there was an explosion. The driver of a nearby white Citroen was also shot and killed. In total, nine men were killed. One of them, Antony Hughes, was a civilian unconnected with the IRA gunmen. Two of the IRA members were unarmed. The police took possession of the soldiers' firearms that day and delivered them to a forensics lab. The next day, a scene of crimes officer and forensics experts began an examination of the scene. On May 8 and 9, post mortem examinations were carried out on the bodies. The soldiers were interviewed between May 9 and 12. In 1988, the Director of Public Prosecutions (DPP) concluded that the evidence did not warrant the prosecution of any person involved in the shootings. A public inquest was opened on 30 May 1995. The jury determined that all nine victims died of multiple gunshot wounds. During the inquest, Applicants were refused access to the witness statements prior to the appearance of the witnesses. Seven of the families initiated civil proceedings against the Ministry of Defense. On 25 April 1991, the Hughes family settled proceedings for 100,000 pounds sterling for the death of Antony Hughes.

3) Admissibility

By a decision of 4 April 2000, the Chamber declared the application admissible.

4) Merits

The Court observes that States have a duty to provide effective official investigation when individuals have been killed by the use of force. Such investigations should ensure effective implementation of the domestic laws, which protect the right to life, and ensure the accountability of any State agents involved. The investigation must also be effective, i.e., capable of leading to a determination of whether the force used in was justified and to the identification and punishment of those responsible. "Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard." The investigation must also be conducted with promptness and reasonable expedition. Finally, the investigation must be sufficiently open to public scrutiny to secure accountability.

The Court examines whether there has been compliance with the procedural aspect of Article 2 of the Convention; it does not engage in fact-finding regarding the disputed facts, as there are civil proceedings pending and fact-finding would run counter to its subsidiary role under the Convention.

The Court finds that Applicant Bridget Hughes, having settled her claims in civil proceedings concerning the death of her husband, may no longer claim to be a victim of violation of the Convention as regards the alleged excessive force used in killing her husband. Her complaints concerning the procedural obligations under Article 2 will be still be considered by the Court.

The Court also finds that the Applicants who did not initiate civil proceedings failed to make use of the available domestic remedies, and the Court is therefore precluded from examining their complaints of a substantive violation of Article 2. Their complaints concerning the procedural obligations under Article 2 will still be considered. Concerning the police investigation, the Court notes that it began immediately after the operation ended, and that it was conducted speedily. The Court notes that the RUC investigation could not be viewed as wholly impartial, and that the investigation and its results were not open to the public. However, as disclosure of police reports may involve sensitive or prejudicial issues, it is not an automatic requirement of Article 2. Such public access may be provided by other stages of the procedures.

Regarding the role of the DPP, the Court states that, because the DPP is not obligated to give reasons in support of its decision whether or not to prosecute, it prevents any legal challenge of the decision and fails to assure a concerned public that the rule of law is being respected. Regarding the inquest, the Court noted that none of the soldiers appeared. This detracts from the inquest's ability to establish the lawfulness of the use of force, and thereby to achieve one of the purposes required by Article 2 of the Convention. Furthermore, the jury's verdict in this inquest could only identify the deceased and the date, place and cause of death. Thus, it plays no effective role in identifying or prosecuting any criminal offenses that may have occurred and, in that respect, falls short of the requirements of Article 2. Furthermore, the Applicants' lack of access to the witness statements failed to protect their interests as next-of-kin. Finally, the inquest was unduly delayed; it was not opened until May 1995, over eight years after the deaths took place. Although these adjournments were requested or consented to by the Applicants, it does not absolve the authorities from the requirement of reasonable expedition. The Court finds that the shortcomings in transparency and effectiveness demonstrate a failure to comply with the procedural obligation of Article 2 of the Convention.

With respect to the claim under Article 6 § 1 of the Convention, the Court finds no basis for reaching any findings as to the alleged improper motivation behind the incident. On the allegation that statistics demonstrate a disparate number of Catholics killed by security forces, evidencing discrimination, the Court finds that statistics cannot in themselves disclose a discriminatory practice within the meaning of Article 14. Regarding the Applicants' Article 13 claim, the Court finds nothing which would prevent civil proceedings from providing redress for the Applicants' claims.

5) Decision

The Court unanimously finds that Article 2 of the Convention has been violated, and awards each applicant the sum of 10,000 pounds sterling (GBP) in damages, GBP 30,000 for the costs among all applicants, and interest. The Court finds that there has been no violation of Article 6 § 1, Article 14, or Article 13 of the Convention.