

McKerr v. United Kingdom (Application no. 28883/95)

From DADEL

1) Reference Details

Jurisprudence: European Court of Human Rights

Date of decision: 4 May 2001

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697328&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

2) Facts

This application was made on 7 March 1993 by Mrs. Eleanor Creaney. Mrs. Creaney died in November 1996, and her son Jonathan McKerr has continued the application. The Applicant alleges that his father Gervaise McKerr was shot and killed by police officers on 11 November 1982, evidencing unnecessary and disproportionate use of force by the officers and a shoot-to-kill policy on the part of the government. He also alleges that there had been no effective investigation into or redress for his father's death, and that this ineffective investigation is evidence of the State's official tolerance of the use of unlawful lethal force. He alleges violation of Articles 2, 13 and 14 of the Convention.

On 11 November 1982 Gervaise McKerr was driving, with two passengers in the car. None of the men was armed. At least 109 rounds were fired into the car by police officers of the Royal Ulster Constabulary (RUC). All three men were killed. The facts relating to this incident remain in dispute despite over ten years of inquest proceedings, three criminal prosecutions and other legal proceedings.

The scene was preserved for the police investigation. The scene of crimes officer took possession of all the officers' firearms the next day. The police made house-to-house inquiries in the area, and appealed via the press for any witnesses to come forward. The officers involved were interviewed three to four days after the incident. The results of the RUC investigation were sent to the Director of Public Prosecutions (DPP), who decided that charges should be brought against the three officers. The defendants were acquitted at the close of the prosecution's case, on the basis that a case had not been made out.

On 11 April 1984, the DPP requested the Chief Constable of the RUC to conduct further investigations into this case. John Stalker and Colin Sampson carried out the investigation. In October 1984, three months after the defendants were acquitted, they were interviewed by the Stalker team. The DPP determined that the evidence uncovered by this investigation did not require further prosecution. An inquest was opened after conclusion of the criminal trial. Mrs. Creaney was denied the opportunity to see a statement one of the witnesses had made to the RUC. She sought judicial review of this decision, and the High Court ruled that she had no right to see the statement. The coroner issued subpoenas to the Chief Constable of the RUC, requesting documents produced by the Stalker/Sampson investigation. The High Court set aside these subpoenas and the coroner closed the inquest, stating that the goal in opening the inquest was no longer achievable. Civil proceedings were initiated in 1991, but were not pursued.

3) Admissibility

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

4) Merits

Regarding the Applicant's claim under Article 2, the Court notes, "where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as, for example, in the case of persons within their control in custody, strong presumptions of fact will arise in respect of any injuries or death which might occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation." It is important that investigations into unlawful death be carried out by independent investigators. The investigation must also be effective, in that it is capable of identifying those responsible and making a determination of whether the force used was justified. The investigation must be prompt and reasonably expeditious, and "there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory." The Court's analysis under Article 2 was confined to whether there has been compliance with the procedural aspects of Article 2 of the Convention.

Concerning the police investigation, the Court observes that slight delays in interviewing the officers involved and confiscating their firearms were not prejudicial to the investigation, but they demonstrated a qualitative difference between investigations into the use of lethal force by police officers and those concerning civilian suspects. The Court also notes that the three RUC officers were instructed to withhold certain evidence, which raises legitimate doubts as to the integrity of the investigation. However, the Court finds that the lack of public scrutiny of the police investigation due to the refusal to disclose certain documents does not automatically violate Article 2. The requisite public access can be provided at other stages of the requisite procedure.

The DPP decided to prosecute the three officers involved; therefore, no issues arise concerning the lack of transparency in the DPP's decision-making process. The Court finds that criminal trial initiated by the DPP met the procedural requirement that it capable of determining the guilt of the three officers involved. However, the trial was limited in scope to determining criminal liability; the Court finds that it was not capable of addressing wider concerns, such as the fact that the officers were ordered to conceal information. The Court recognizes that situations can arise in which a criminal trial of this limited scope cannot address issues that may arise and which deserve examination under Article 2. It therefore goes on to examine whether these concerns were adequately addressed by the authorities. The independent police investigation by Stalker and Sampson, undertaken at the behest of the DPP, was intended to determine whether there was "evidence of perverting the course of justice." The Court finds that although this inquiry was sufficiently independent, it was not conducted with reasonable expedition. Furthermore, since the results were not published, there was no public scrutiny of the investigation.

The Court finds that the inquest, although public, was not effective because its scope was limited to the facts immediately relevant to the deaths of Gervaise McKerr and his passengers. Additionally, the police officers involved in the shooting were not required to appear at the inquest and declined to do so, which "detracted from the inquest's capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes

required by Article 2.” Furthermore, because the results of the inquest could not force criminal prosecution by the DPP, the inquest did not play an effective role in identifying or prosecuting any criminal offences, which may have occurred. The Court also finds that the Applicant's inability to get access to witness statements prior to the appearance of witnesses -- which contributed to long delays in the inquest while Applicant made use of legal remedies -- put Applicant at a disadvantage in terms of preparation and ability to participate in questioning. The Court therefore finds that Applicant's interest as next-of-kin was not adequately protected, and that the inquest was not conducted promptly or expeditiously.

Although the civil proceedings provide a judicial fact-finding forum, civil proceedings are taken at the initiative of the Applicant, not the authorities, and do not involve identification or punishment of the alleged perpetrator. Therefore such proceedings cannot be taken into account in the State's procedural compliance with Article 2. However, the Court finds that there were shortcomings in transparency and effectiveness in these investigations which violate the procedural obligations Article 2 of the Convention.

Even though statistically it appears that the majority of people shot by the security forces were from the Catholic or nationalist community, The Court did not consider that statistics can in themselves disclose a practice which could be classified as discriminatory within the meaning of Article 14.

With respect to the claim under Article 13 of the Convention, the Court notes that the Applicant has lodged civil proceedings, which are pending and are capable of providing redress. Applicant's complaint concerning the investigation by the authorities has been addressed under Article 2, and the Court finds that no separate issues arise to warrant readdressing it under Article 13.

5) Decision

The Court unanimously finds a violation of Article 2 of the Convention and awards 10,000 pounds sterling (GBP) in damages, in addition to GBP 25,000 in costs, plus interest. The Court finds that there was no violation of Articles 13 and 14 of the Convention.