



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ALDER v. THE UNITED KINGDOM

(Application no. 42078/02)

JUDGMENT
(Striking out)

STRASBOURG

22 November 2011

FINAL

22/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Alder v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,

Nicolas Bratza,

David Thór Björgvinsson,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42078/02) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Ms Janet Alder (“the applicant”), on 30 September 1998.

2. The applicant was represented by Mr A. Gask, a solicitor with Liberty, a civil liberties organisation based in London. The United Kingdom Government (“the Government”) were represented by their Agent, Ms Laura Dauban, of the Foreign and Commonwealth Office.

3. The applicant complained, on her brother’s behalf, about his death in custody on 1 April 1998 and, in particular, argued that there had been a violation of the substantive aspect of Articles 3 and 14 as well as a breach of the procedural guarantees of Articles 2 and 3 of the Convention.

4. By a decision of 14 December 2010 the Court declared the application admissible.

5. On 21 July 2011 the Government submitted a declaration on the basis of which it requested the Court to strike the case out of its list of cases. By letter of 9 September 2007 the applicant submitted comments thereon.

THE FACTS

6. The applicant, Ms Janet Alder, is a British national living in Lancashire. The case concerns the death of her brother, Mr Alder, while he was in the custody of Humberside police on 1 April 1998. Mr Alder was of Nigerian origin, he was born in 1960 and he had two children.

7. The facts of the case, as submitted by the parties, are summarised below. A more detailed description can be found in the Court's decision on the admissibility of this case (*Alder v. the United Kingdom* (dec.), no. 42078/02, 14 December 2010).

8. In the early hours of 1 April 1998 Mr Alder was assaulted at a nightclub and transported by police officers to hospital. He was disruptive at the hospital and aggressive to police officers and he was arrested for breach of the peace. He was transported in a police van to Humberside police station.

9. On arrival, he was unconscious. He was dragged into the police station and placed face down on the floor of the custody unit. His body was inert. Blood dripped from his mouth. His trousers and underwear were around his knees and he was doubly incontinent. From arrival until his death, he was unconscious and his breathing was audibly slow and laboured. The custody unit was a small prisoner/reception area through which various police officers circulated while Mr Alder was on the floor. Various cameras recorded constantly (image and sound) in the custody suite. His handcuffs were removed approximately 2 minutes after his arrival.

10. Some ten minutes after his arrival, the police officers realised that he had stopped breathing. Their efforts and those of the ambulance personnel, to resuscitate him were unsuccessful. He was later pronounced dead.

11. On the same day the Humberside police began an extensive murder investigation into the assault on Mr Alder in the night club. While the pathologist indicated by 2 April that that assault had not caused Mr Alder's death, he did not formally report until 29 April at which point Humberside police handed their investigation file to West Yorkshire police. The latter had also begun a death in custody investigation on 1 April 1998.

12. On 8 April 1998 the relevant police officers were notified that consideration was being given to bringing disciplinary proceedings against them and they were later suspended from duty. Expert reports received during this period disagreed on the issue of causation namely, whether medical treatment at the police station would have changed the outcome.

13. In June and August 1998 the West Yorkshire police sent investigation reports to the Police Complaints Authority ("PCA") and to the Crown Prosecution Service ("CPS"): the reports made numerous criticisms and recommendations and highlighted the above-noted causation problem.

14. In August 1999 the relevant police officers were charged with misconduct in public office and the CPS postponed the prosecution pending the outcome of the Inquest.

15. The Inquest began in July 2000 and took extensive witness and expert evidence. On 24 August 2000 the Inquest jury found that the relevant injury to Mr Alder had been sustained either in the police van or in the custody suite and that he had been "killed unlawfully". The relevant officers

challenged this verdict on judicial review and, on 9 April 2001, the High Court rejected their application.

16. The CPS then resumed its consideration of criminal charges reviewing, notably, their and other medical experts' views on whether earlier intervention by the police officers could have saved Mr Alder's life. In March 2002 the trial judge allowed the CPS to add a count of gross negligence manslaughter to the indictment.

17. On 21 June 2002, at the close of the prosecution case, the trial judge dismissed the gross negligence manslaughter charge, on the grounds of lack of causation and the charge of misconduct in public office, on the ground that there was no evidence of "deliberately overlooking" the risk that Mr Alder was in need of medical care. All officers were acquitted and their suspension was lifted. Further to the Attorney-General's request for an advisory opinion on the elements of the offence of misconduct in public office, on 7 April 2004 the Court of Appeal confirmed the trial judge's opinion.

18. The PCA proposed the pursuit of neglect of duty charges against the relevant officers but the Deputy Chief Constable Clark of Humberside police did not consider that disciplinary charges were required. The PCA responded by directing disciplinary charges to be brought against the relevant officers (section 93(3) of the Police and Criminal Evidence Act 1984).

19. In January 2003 the officers were officially charged with the disciplinary offence of failing to carry out their duties with due promptness and diligence. Following a disciplinary hearing, on 24 June 2003 the disciplinary charges were dismissed against all officers.

20. In April 2004 the Home Secretary required the newly formed Independent Police Complaints Commission ("IPCC") to review the events leading up to and following the death of Mr Alder, including considering whether or not the manner in which the investigation was conducted had impacted on the later criminal and disciplinary proceedings.

21. On 27 February 2006 the IPCC issued an extensive report. It was highly critical of the conduct of the arresting officers and of officers in the custody suite, of the lack of independence and effectiveness of the Humberside and West Yorkshire investigations, of the initial decision not to pursue disciplinary charges until obliged to do so by the PCA as well as of the disciplinary proceedings pursued. It identified "major systemic failures" notably, that the failure by officers to assist Mr Alder was largely due to assumptions they had made based on negative racial stereotypes and that there had been a major failure in the police disciplinary system.

22. On the same day the Humberside police issued a statement indicating the improvements, particularly as regards the racism criticisms, which had taken place since Mr Alder's death. Soon thereafter the Chief

Constable of Humberside police issued a letter of apology addressed directly to the applicant.

23. Three civil actions have been pursued as regards Mr Alder's death. The first was begun by Mr Alder's son: it was settled in March 2007 on a confidential basis. The second was issued by the applicant against several defendants: in October 2008 she settled with the PCA for GBP 20,000 and it would appear that the remainder of that action is ongoing. The third was issued by both the applicant and Mr Alder's sons against several defendants alleging that they had failed to preserve evidence and investigate the death: it would appear that this action has been discontinued, at least in part.

THE LAW

24. The applicant complained of a violation of the substantive protection of Articles 3 and 14 of the Convention as well as of a breach of the procedural guarantees of Articles 2 and 3 of the Convention.

25. By letter dated 21 July 2011 the Government requested the Court to decide, on the basis of their unilateral declaration, that it was no longer justified to continue the examination of the application and to strike the case out of the list of cases under Article 37 of the Convention.

26. The unilateral declaration provided as follows:

"The Government accept that the lack of an effective and independent investigation in this case constitutes a violation of the procedural obligations in Articles 2 and 3 of the Convention. Further, the Government accept that the treatment that the Applicant's brother received in police custody amounted to a substantive violation of Article 3 with 14 of the Convention.

As regards the lack of an effective and independent investigation, the following steps were taken after the death of the Applicant's brother in 1998:

(i) The Police Reform Act 2002, which has been effective from 1 April 2004, created a new police complaints system, it established the Independent Police Complaints Commission ("IPCC") and placed a duty on all police forces to refer cases to the IPCC which involve the death or serious injury of a person following contact with the police;

(ii) The IPCC is an independent body with guardianship over the police complaints system. It has extensive powers including the power to independently conduct its own investigations. IPCC investigators have all the powers of a constable in conducting an investigation and openly publish the findings of their investigations;

(iii) In December 2008, police regulations were introduced which set out a new system for the handling of disciplinary cases against police officers (Police (Conduct) Regulations 2008 Proceedings under these regulations are required

to proceed without delay unless there is considered to be a risk of prejudice to any criminal proceedings.

As regards the treatment that the Applicant's brother received in custody, the Government refer the Court to the following events since 1998:

(i) There have been a number of high profile reports and inquiries including (a) the Stephen Lawrence Inquiry in 1999 (looking into the matters arising from the death of Stephen Lawrence, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes); (b) the Commission for Racial Equality's Formal Investigation into the Police Service in 2004 (looking into how police officers are recruited, trained and managed and whether they have experienced any racial discrimination in the service); and (c) the Bill Taylor Review In 2005 (looking into police disciplinary arrangements),

(ii) There has been significant development in the guidance available to those working in police custody since 1998. In 2006, the Association of Chief Police Officers and the Home Office jointly published "Guidance on the Safer Detention & Handling of Persons in Police Custody", for the guidance of the police service and those professionals (such as doctors) working in the police custody environment. This Guidance sets out in some detail the risk assessment processes to be followed at various stages, including on reception, at various key points during detention (such as point of charge) and prior to release, as well as a series of principles to be used where the use of force is necessary in custody, and details the procedures to be followed to care for those in police detention. In 2010, this guidance was reviewed and the feedback is currently being analysed before the revised guidance will be published in late 2011.

The Government are confident that these procedures and laws will assist in leading to the prevention of the sorts of circumstances that surrounded the Applicant's brother's death.

In these circumstances, and having regard to the particular facts of the Applicant's case, the Government declare that they hereby offer to pay *ex gratia* to the Applicant the amount of €26,500 (twenty-six thousand, five hundred euros), plus €7,500 (seven thousand, five hundred euros) to cover any legal costs and expenses, to be paid in pounds sterling to a bank account named by the Applicant within three months from the date of the striking-out decision of the Court pursuant to Article 37 of the ECHR. This payment will constitute the final settlement of the Applicant's case."

27. In her letter of 9 September 2011 the applicant welcomed the admission of violations of Articles 2, 3 and 14 of the Convention but underlined that she did not accept that the reforms outlined had been sufficient to correct the type of systemic failings which led to her brother's death and deprived her family of any meaningful accountability for it.

28. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court, in particular, to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

29. It also recalls that, in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

30. To this end, the Court has examined carefully the declaration in the light of the principles emerging from its case-law (in particular, *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

31. The Court has established in a number of cases, including in cases against the United Kingdom, its practice as regards complaints about matters similar to those about which the present applicant complains (including *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III; *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001-III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, ECHR 2001-III (extracts); *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002-II; *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I; *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; and *Bailey v. the United Kingdom* (dec.), no. 39953/07, 19 January 2010).

32. Having regard to the nature of the admissions contained in the Government’s declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)). It is understood that the declaration only concerns the application before this Court and that the adoption of this judgment is without prejudice to any pending domestic civil proceedings concerning the death of the applicant’s brother. It is also understood that, in the event of a failure to pay the applicant the relevant sums within the three-month period to which the declaration refers, the Government will pay simple interest on the amounts, from the expiry of that period until settlement, at the rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

33. In light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

34. In view of the above, it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's unilateral declaration and of the modalities for ensuring compliance with the undertakings referred to therein; and
2. Decides to strike the case out of the list.

Done in English, and notified in writing on 22 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President