



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

FOURTH SECTION

CASE OF O'DOWD v. THE UNITED KINGDOM

(Application no. 34622/04)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of O'Dowd v. the United Kingdom,

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

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 34622/04) 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 Mr Bernard O'Dowd and Mr Michael Gabriel O'Dowd, Irish nationals, (“the applicants”), on 10 September 2004.

2. The applicants were represented by Madden & Finucane, solicitors practising in Belfast. The United Kingdom Government (“the Government”) were represented by their Agent, Mr J. Grainger of the Foreign and Commonwealth Office, London.

3. The applicants alleged that there had been no adequate investigation into allegations of collusion and/or involvement by security forces in the killing of their relative, nor any effective remedy for the same. They invoked Articles 2 and 13 of the Convention.

4. By a decision of 6 March 2007 the Court declared the application admissible.

5. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant Bernard O'Dowd, who was born in 1923 and lives in Drumnee, County Meath, Ireland, was the father of Barry O'Dowd and Declan O'Dowd. The second applicant Michael Gabriel O'Dowd, who was born in 1951 and lives in Bleary, was the son of Joseph O'Dowd.

A. The attack on the O'Dowd home and the initial investigation

7. On the evening of 4 January 1976, the first applicant was hosting a family get-together at his home in Ballydougan, County Down. At about 6.30 p.m. three masked gunmen forced their way into the house. Barry O'Dowd, Declan O'Dowd and Joseph O'Dowd were shot and killed. The first applicant was hit by nine bullets but survived. About thirty shots were fired during the incident. No organisation claimed responsibility for their deaths. The same night an attack was launched on the home of another Catholic family in Armagh, in which John and Brian Reavey were killed and Anthony Reavey was injured.

8. The three men were believed to have made their getaway in a Morris 1300 car, 3315XZ, stolen earlier from Robert Street, Lurgan.

9. The emergency services – police and ambulance – arrived within a short time. Detectives and Scene of Crime Officers commenced investigations. Post-mortems were held. House to house inquiries were conducted in the area and along the suspected getaway route with negative results. Nineteen spent bullet cases were recovered at the scene and the weapon used was identified as one used in four other attacks. Numerous witnesses were interviewed, including members of the family who were interviewed at length. Ronan O'Dowd stated that he had observed two men standing beside a red car, possibly a “1300”, close to the house, both men were masked and had “walkie talkie” radios. Cathal O'Dowd stated that he had observed a blue coloured “Viva” car near the house that afternoon.

10. Several days before the attack, Ronan O'Dowd had seen masked men running up a lane adjacent to the house, in what the applicants believed was a dummy run for the attack. The family also recollected seeing officers of the Royal Ulster Constabulary (“RUC”) and Ulster Defence Regiment (“UDR”) in fields near the house the day before the attack, which was an unusual occurrence.

11. Police inquiries revealed that a red Morris 1300 had been stolen from Lurgan on 4 January 1976; it was found burnt out on 5 January 1976. Inquiries in Lurgan proved negative. No further information was received on the “Viva” car.

12. Three men were arrested by the police on 5 January 1976 and questioned about the murders. They were released on 8 January 1976 and no charges were preferred.

13. On 20 January 2006, the first applicant stated that one man who had entered the house was similar in appearance to a man whom he named. The man was arrested, questioned but eliminated from the inquiry following verification of his alibi.

14. In May-June 1976, the police questioned the first applicant and asked him to identify a weapon. He identified the weapon as one used in the attack. He was told that it was linked to Robin Jackson, a prominent loyalist paramilitary and to a number of other loyalist attacks.

15. An Inquest held on 11 February 1977 returned open verdicts.

B. The investigations concerning McCaughey and Weir

16. After 1976 there were no further developments in the O'Dowd murders until 1999 when John Weir made allegations of police involvement in a range of loyalist terrorist incidents including the attack on the O'Dowds.

17. In the course of an investigation in 1978, the police had arrested a reserve police constable, William McCaughey, who, in the course of questioning, revealed his part in the abduction of a priest and in a variety of other loyalist paramilitary incidents. McCaughey's revelations gave rise to investigations in eleven specific cases, some of which were linked in terms of the identities of those involved, the modus operandi or by virtue of the ballistics examinations of weapons used. Nine suspects were arrested in total, including five police officers and all were eventually charged with offences.

18. One of those implicated was a police officer John Weir who was named as having been involved in the murder of a shopkeeper called Strathearn in Ahoghill in April 1977: he was convicted for that murder in June 1980 and sentenced to life imprisonment. The Government stated that both McCaughey and Weir refused to name the two loyalist paramilitaries also involved with them in the murder unless they received immunity from prosecution. The police and prosecuting authority took the decision prior to the trial not to enter into any process of bargaining with Weir and McCaughey. While both were approached by the police after their convictions to see if at that stage they would give evidence against the loyalist paramilitaries, each again refused to do so unless there was something in it for themselves. The Government stated that during the period in which Weir was detained he was interviewed on a large number of occasions. At no time did he implicate himself or others in any offence other than the Strathearn murder.

C. The Weir allegations and the response of the authorities

19. On 1 February 1993, John Weir was released from prison on licence. In January 1999, he made a statement to a journalist alleging RUC and Ulster Defence Regiment (“UDR”) collusion with loyalist paramilitaries from the Portadown area in the mid-1970s. This statement was published in the Sunday Times newspaper in March 1999. It was obtained by the Patrick Finucane Centre, a human rights non-governmental organisation in Derry (“the Centre”).

20. John Weir's statement made detailed allegations about security force collusion with loyalist paramilitaries in a series of incidents. He alleged *inter alia* that RUC Reserve Constable Laurence McClure had told him that Robin Jackson had carried out the murders in the O'Dowd home and that the attack had been co-ordinated with the attack on the Reavey family the same night in which security force personnel participated directly. The statement also made links between these incidents and other attacks allegedly carried out by members of the security forces, both RUC and UDR, and loyalist paramilitaries. This group used the farmhouse in Glennane owned by James Mitchell, a RUC reservist, as a base from which to carry out attacks on Catholics and nationalists. Other attacks allegedly included the murder of John and Brian Reavey and wounding of Anthony Reavey in their home on 4 January 1976 (see application no. 34640/04); the murder of Colm McCartney and Sean Farmer at a bogus vehicle checkpoint in August 1975 (see application no. 34575/04); the attack on Donnelly's Bar in which Trevor Brecknell, Michael Donnelly and Patrick Donnelly were killed (see application no. 32457/04); and the attack on the Rock Bar in which Michael McGrath was seriously injured (see application no. 34561/04). Weir also linked these attacks to the Dublin and Monaghan bombings in which 33 people were killed in the Republic of Ireland.

21. On or about 10 June 1999, RTE, an Irish television channel, broadcast a television programme that contained allegations of security force involvement in a number of deaths, including that of Trevor Brecknell. Weir made allegations on that programme that members of the RUC and UDR were directly involved in the attack on Donnelly's Bar. A BBC Spotlight programme produced a similar documentary dealing with these allegations.

22. These allegations attracted considerable attention on both sides of the Irish border and became the subject of police investigation in both jurisdictions. The Government stated that the police investigation in Northern Ireland was focussed on determining whether Weir's allegations should be assessed as sufficiently credible to require a full investigation. They obtained from the journalist an edited transcript of the interview with Weir. While his whereabouts were unknown to the RUC, Weir met with senior Irish police officers at the Irish Embassy on 15 April 1999. A copy of

his statement was provided by the Garda to the RUC, along with a further statement made by Weir to another journalist dated 3 February 1999. The police analysed the available materials and sought to identify the personalities to be interviewed. It became apparent that some had died and that others, living abroad, could not be traced. A series of seven interviews were conducted, under cautions, between July and December 2001, of those individuals central to Weir's account who could be traced. No charges were preferred. The interviews followed the format of Weir's allegations being put to the interviewee for his or her response. The predominant response was denial of any involvement and claims that Weir had been untruthful. No admissions were made by any interviewee. Interviews were also conducted with less central personalities and with police officers involved in interviewing Weir in 1978. The latter stated that Weir had not mentioned the matters now being alleged.

23. Meetings were held regularly with RUC counterparts in the Republic of Ireland. The RUC co-operated also with the judicial inquiry established in the Republic of Ireland into the Dublin and Monaghan bombings (see the description of the inquiry in the case of Brecknell referred to above). Amongst matters about which the RUC team provided information to the inquiry was ballistics information which linked some of the weapons used to more than one incident. In February 2000 a substantial report was compiled by the RUC for the Garda dealing with Weir's allegations. It profiled Weir and dealt *inter alia* with a description of the 1978 investigation into McCaughey, Weir and others. It concluded that the investigation would continue but that his credibility was in doubt. According to the Government, despite inquiries being conducted, Weir's whereabouts could not be traced. This report was not disclosed as the investigation was continuing. An internal RUC report dated 27 February 2001 concluded that it would be necessary to interview Weir before any view could be finalised in respect of the credibility of his allegations: such interview was not possible as his whereabouts were not known. The report noted the absence of any previous mention of the allegations before 1999 and that much of what he said was hearsay and speculation. Inquiries made of the British Embassy in Nigeria (where he had a known address) and the criminal intelligence service and others failed to locate Weir. Contact was made with the Garda and the secretariat of the Inquiry into the Dublin and Monaghan bombings without positive result.

24. The Serious Crime Review Team ("SCRT") was established in March 2004, with responsibilities including the review of all historical murders by way of case assessment for evidential and investigative opportunities. A preliminary case assessment was carried out by a detective chief inspector, who audited all known information and documentation.

25. In light of the preliminary assessment, the case was referred to the Historical Enquiry Team (HET). On 28 April 2006, a Senior Investigating

Officer reported on the further review; a number of potential lines of enquiry were identified and recommendations made, including that the HET should extensively interview Weir. This recommendation was approved. The HET director of Investigations, Detective Chief Superintendent James of the London Metropolitan Police Force, took over personal supervision of the investigation which has progressed through the first three of five stages of the HET process (collection of all relevant material; assessment of the investigations to date; review of evidence, with intelligence and open and non-police sources together with a meeting with the families of the victims of the attack). As a number of investigative opportunities were identified and to be followed up, the case was to continue to be processed by HET, which had been put in touch with Weir by the Centre. The Government submitted that if any evidence of police involvement in the murders was found, the Office of the Police Ombudsman for Northern Ireland would then become involved. The Government have provided recent information that Weir finally agreed to meet with the HET in Dublin; he refused, however, to make a written statement or to give evidence in court.

26. There has been contact between the police and family members, their solicitors or the Centre. In particular, there were meetings in September 2002 with Detective Chief Inspector Paterson, and a meeting with the Chief Constable in June and August 2004; members of HET met with families or their representatives on 29 March and 31 May 2006; and there has also been extensive correspondence with the families or their representatives.

D. Application for judicial review concerning the inadequacy of the investigation

See *Brecknell*, cited above (§§ 39-41).

E. Reports of the Independent Commissions of Inquiry (Republic of Ireland)

See *Brecknell*, cited above (§§ 42-49).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

27. The applicants complained that the United Kingdom had failed to provide an effective official investigation into the circumstances of their

relatives' deaths after allegations were made in 1999 by John Weir as to RUC involvement, invoking Article 2 of the Convention which provides:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”.

A. The parties' submissions

28. The parties' submissions repeat those made in the *Brecknell* case (cited above, §§ 54-59, 60-64).

B. The Court's assessment

29. The Court refers to its statement of principles and analysis as set out in *Brecknell* (cited above, §§ 65-81). For the same reasons it concludes that the investigative response to Weir's allegations lacked the requisite independence in its early stages when under the control of the RUC. There has been, in that respect alone, a violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30. In view of its findings above, the Court finds that it is not necessary to examine separately the complaint under this Article.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

32. The applicants claimed non-pecuniary damage for the suffering and distress caused by the State's failure to conduct an effective official investigation into the circumstances of their relatives' deaths.

33. The Government submitted that even if there was a breach of the procedural obligation it would not be appropriate to apply the same scale as in cases of procedural breaches in the immediate aftermath of death. They considered a finding of a violation should be held in itself to constitute just satisfaction. Alternatively, any award should be modest.

34. The Court has found that the national authorities failed in their obligation to provide a properly independent investigative response in the initial stages following the allegations made by John Weir concerning the deaths of the applicants' relatives. In the circumstances, it considers that the applicants sustained some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making an assessment on an equitable basis, the Court awards each applicant the sum of EUR 5,000.

B. Costs and expenses

35. The applicants claimed GBP 7,721.34 for solicitors' costs, inclusive of value added tax (VAT) for this application.

36. The Government submitted that the overall solicitors' charging rate (with an uplift of 50% for care and conduct) was excessive, and half the amount was appropriate. The overall hours claimed were also excessive given that similar issues arose in the four other cases considered at the same time. They proposed no more than GBP 20,000 for solicitors' costs in total for all four cases together.

37. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom (just satisfaction)*, nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX).

38. The Court has already awarded EUR 29,000 for solicitors' costs in the *Brecknell* case (§ 92). Having regard to the fact that only the initial presentation of facts in this case required separate treatment from the lead application, it awards the applicants EUR 5,000, which figure is inclusive of VAT.

C. Default interest

39. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 2 of the Convention due to the lack of independence of the RUC during the initial stages of the investigation begun in 1999;
2. *Holds* that it is not necessary to examine separately the applicants' complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into pounds sterling at the rate applicable at the date of settlement;
 - (i) in respect of non-pecuniary damage, EUR 5,000 (five thousand euros) each;
 - (ii) in respect of costs and expenses, EUR 5,000 (five thousand euros);
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President