



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

FOURTH SECTION

CASE OF MCCARTNEY v. THE UNITED KINGDOM

(Application no. 34575/04)

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 McCartney 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. 34575/04) 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 an Irish national, Mr Sean McCartney (“the applicant”), on 10 September 2004.

2. The applicant was 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 applicant alleged that there had been no adequate investigation into allegations of collusion and/or involvement by security forces in the killing of his brother, nor any effective remedy for the same. He invoked Articles 2 and 13 of the Convention.

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

5. The applicant and the Government each filed further written observations (Rule 59 § 1), to which they each responded with further written comments (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Derry. He was the brother of Colm McCartney.

A The attack at Altnamachkin and the initial investigation

7. On the night of 24 August 1975, Colm McCartney, the applicant's brother and Sean Farmer were driving home from the All-Ireland Gaelic football semi-finals in Croke Park, Dublin. Both men were found shot dead on the Cortamlet Road, Altnamachin, in South Armagh. Colm McCartney had been shot four times, Sean Farmer six times. According to the later inquest, the time of death was about 11.35 pm. The car was found burnt out half a mile from the murder scene.

8. Prior to their deaths, at about 10.45 pm a police patrol in an unmarked car had been stopped at what was believed to be a bogus checkpoint ("VCP") manned by armed men in military style uniforms on the A25 several hundred yards from where the bodies were found. A short conversation took place between the three RUC officers and a person holding a torch dressed in full military combat uniform. The officers noticed a second person also dressed in military uniform lying in a ditch apparently giving cover with a rifle. The scene at the checkpoint roused suspicions, *inter alia*, due to the lack of other vehicles, the accent of the person who stopped them and the length of hair of the man in the ditch. After being allowed through the checkpoint, the officers requested clarification by radio as to the presence of any army checkpoints in the vicinity. They were informed that none were operating. The police patrol drove to a police station, where, requesting army support, they decided to investigate further.

9. At about 11.30 pm a local resident who had been walking his dog noticed a vehicle stopped on Cortamlet Road. He saw the interior light of the car come on and a door on the passenger side open. Three or four gunshots were heard. The witness saw a light from a lamp lying on the road. He then heard the sound of someone running along the road and a man's voice shouting "Stop, stop," several times. This was followed by a flash and a bang. He heard a wild scream and everything went quiet. Fearing for his safety, the witness hid behind a tree. He heard further shooting, five to ten shots. After some minutes, he heard a car engine being started and the car, brownish with a black vinyl roof, drove past him without its lights on. He went to a neighbour who returned with him to the scene where they found two bodies. They contacted the police.

10. At first light, a Detective Constable visited the scene and inspected the bodies which were some 50 metres apart. He arranged for the scene to be examined, photographed and mapped. The bodies were identified.

11. The police visited the McCartney and Farmer families that day. On the same day, Colm McCartney's car was found gutted by fire half a mile from the scene. It was subsequently established by ballistics examinations that three firearms had been used and that the weapons had been used in other incidents.

12. The police believed that the murders had been carried out by an extreme loyalist paramilitary organisation, reacting to a murder of a local Protestant. They had little doubt that the men who stopped the police patrol had been directly connected with the murders if not in fact the actual murderers.

13. A report was submitted by the police to the Director of Public Prosecutions on 17 February 1976.

14. An inquest occurred on 23 July 1976. It appears that the local resident who witnessed the shooting did not appear at the inquest, nor was his statement made available due to the decision of a police officer to protect his identity.

15. The applicant claimed that there were concerns about the thoroughness of the original investigation. He stated that the occupants of the two cars who had come upon the two bodies were not asked to give a statement to the police or at the inquest. Because of the method used (a VCP manned by persons in uniform), there were allegations of security force collusion made at the time of the shooting.

B. The investigations concerning McCaughey and Weir

16. The investigation did not close and became active again in 1978, when a Catholic priest Father Hugh Murphy was abducted by loyalist paramilitaries intending to use him as a hostage *vis-à-vis* the IRA. The police arrested a reserve police constable, William McCaughey, who, in the course of questioning, revealed his part in the abduction of the priest and in a variety of other loyalist paramilitary incidents. McCaughey also named a police officer as being involved in a range of incidents. He specifically referred to a well-known paramilitary as being involved in the Altnamachin murders. While this paramilitary had been arrested and interviewed by the police on a number of occasions, the Government stated that there was no record that he had been specifically interviewed about the Altnamachin murders. The police officer was arrested and questioned, *inter alia*, about his role in the murders of McCartney and Farmer. He made no admissions. He was charged with other serious offences, resigned from the police and was subsequently convicted and sentenced.

17. 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 McClure and Robert McConnell, a member of the UDR, along with members of the Ulster Volunteer Force ("UVF"), a proscribed loyalist paramilitary organisation, had been involved in the murder of Colm McCartney and Sean Farmer.

21. The statement also made links between the attack on Donnelly's Bar 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 attack on Donnelly's Bar in which Trevor Brecknell, Michael Donnelly and Patrick Donnelly were killed (see application no. 32457/04); the murder of Joseph, Barry and Declan O'Dowd and wounding of Barney O'Dowd (see application no. 34622/04); and the attack on the Rock Bar in which Michael McGrath was seriously injured (see application no. 34651/04). Weir also linked these attacks to the Dublin and Monaghan bombings in which 33 people were killed in the Republic of Ireland.

22. 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.

23. 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. Amongst those interviewed by the police in the course of the preliminary investigation of Weir's allegations, was one person questioned about the Altnamachin murders. He denied any involvement and made no admissions.

24. 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 *Brecknell* case 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.

25. 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. It was noted that the dossier provided by the Centre included statements from civilian witnesses who had allegedly come across the bodies following the murders. The SCRT attempted without success to obtain access to these materials. 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 inquiry were identified and recommendations made, including that the HET should extensively interview Weir. This recommendation has been 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 on 21 January 2000 with Chief Superintendent McCann; on 19 December 2001 with Detective Inspector Aiken and in November 2002 with Detective Inspector Williamson and in June and August 2004 with the Chief Constable; members of HET met with families or their representatives on 30 March and 25 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 applicant complained that the United Kingdom had failed to provide an effective official investigation into the circumstances of her sons' death 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 essentially 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 applicant 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 his brother's death.

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 death of the applicant's brother. In the circumstances, it considers that the applicant 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 the sum of EUR 5,000.

B. Costs and expenses

35. The applicant claimed GBP 10,550.97 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 applicant 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 on 1999;
2. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, 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);
- (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 applicant's 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