



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

FIFTH SECTION

Application no. 17707/10
Gráinne NIC GIBB
against Ireland
lodged on 12 March 2010

STATEMENT OF FACTS

The applicant, Ms Gráinne Nic Gibb, is an Irish national who was born in 1970 and lives in Dublin. She is represented before the Court by Mr J. MacGuill, a lawyer practising in Dundalk, Ireland. The application concerns the death of her partner, Ronan MacLochlainn. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The circumstances of the case

1. Background facts

On 1 May 1998 the deceased was shot dead by a police officer, allegedly Officer A, while the deceased and five others were involved in an armed raid on a security van. Police officers had fired a number of shots at the scene. The applicant maintains that none of the raiders fired any shots but she accepts that the deceased was in possession of a gun. He was pronounced dead at the scene. The five others involved in the raid were arrested, convicted and sentenced for serious criminal offences.

2. The inquest

The inquest into the deceased's death opened on 6 August 1998. The applicant was legally represented. Evidence was given by the State Pathologist. The inquest was adjourned and it was adjourned from time to time thereafter until the 13 December 2000 when the Coroner refused the request of the police for police witnesses to be granted anonymity. The next hearing date of November/December 2001 was opposed by the applicant since she was still awaiting a response to her request for legal aid.

Officer A was killed in December 2001. The applicant wrote to the Coroner seeking a preliminary hearing date in September 2002, four times

in 2003, twice in 2004, three times in 2005, twice in 2006, once in 2007 and again in April 2008. She received no response. While the Coroner had been ill, the applicant claims that he was ready for duty by early 2004.

On 4 December 2008 the Coroner fixed a preliminary hearing for 22 January 2009. On that date, the applicant requested the Coroner to direct that “all documentation in the form of guidelines, training manuals, instructions or rules and regulations issued to or circulated within [the police] in connection with the use of firearms and in particular the use of firearms in engagements/situations, and all documentation arising in connection with any disciplinary proceedings taken as a result of the shooting of the [deceased] or documentation arising in connection with the decision not to institute such proceedings” be disclosed by the police. The Coroner rejected the request as he did not consider the material relevant.

On 16 January 2009 the applicant received the depositions of nine police detectives and three other witnesses. On 24 July and 21 August 2009 the police provided additional documentation to the applicant.

The inquest began on 28 September 2009 and lasted two days.

On the first day, the Coroner confirmed that a stenographer would not be present. The applicant was also told that one of the proposed witnesses, a Detective, was on holiday. She sought an adjournment arguing that the Detective was the only witness who had been a member of the same unit as Officer A: the Coroner refused to adjourn. The Coroner later also refused to call the Detective Inspector named as Officer A’s commanding officer. Evidence was given by the State Pathologist: the cause of death was a single bullet wound to the chest. Evidence was also given by a police mapper, a police photographer, by three police officers present at the scene and by police forensic and ballistics experts.

On the second day of the inquest, evidence was given by approximately 6 civilian witnesses, none of whom could give evidence of having seen the deceased being shot, and by three police witnesses who had been present at the scene. Evidence was also given by a further police ballistics expert and by another police officer. The applicant claims that the evidence was that a total of 12 shots had been fired by three police officers, that no shots had been fired by the deceased or by any of the raiders and that the fatal bullet had been fired by the, now deceased, Officer A.

During the inquest various photographs of the scene, of the vehicles involved in the incident and of the tests that appeared to have been performed on the vehicle (in an attempt to show the trajectory of the bullet that entered the deceased’s body) were produced by the police. The applicant claims that many photographs had not been previously disclosed to her. She submits that, when she was examining the police ballistics expert, the Coroner refused to allow questions about the type of car from which the fatal bullet came on the basis that this information was of no value. The applicant also claims that neither the type of car Officer A was allegedly driving nor any analysis of it was disclosed to her. Finally, she submits that the Coroner refused to allow her counsel to address the jury on the evidence before the inquest.

The jury retired at 3:36pm on 29 September 2009 and returned at 3:50pm with a verdict of death by misadventure.

3. *Civil proceedings*

On October 1999 the applicant took civil proceedings against the Minister for Justice, Equality and Law Reform, Ireland and the Attorney General (the State defendants”) seeking damages for unlawful, wrongful and intentional killing and assault of the deceased and for negligence and breach of duty. The basis of the claim is that the police were aware that a robbery was planned and that the deceased was to participate, that they should have been aware of the risks involved and that they should have thwarted the robbery earlier.

In September 2003 the applicant sought discovery of documents covering the planning/carrying out of and follow-up to the incident (including any disciplinary, administrative and any other procedures of inquiry initiated by the State). Since the State defendants appeared to consent to discovery, in June 2005 the High Court made a consent order. It later emerged that there had been a misunderstanding by the State’s Counsel and the consent order was set aside. The State defendants went on to contest discovery arguing that the applicant’s case was unsustainable. On 7 March 2006 the High Court found that she had made out a case on the pleadings for which the discovery sought was relevant. The State defendants argued that discovery could be prejudicial to police work and the High Court found that this was an argument to be developed in the responding affidavit of discovery. That court ordered extensive discovery of police documentation about the planning of, carrying out of and follow-up to the incident of 1 May 1998.

In mid-2006 the defendants appealed against the order for discovery to the Supreme Court. A hearing date was fixed for early November 2011. At a case management “call over” of cases in October 2011, the State stated that it would comply with discovery and withdraw its appeal. It is not known if discovery has been made or if the High Court hearing has taken place.

B. Relevant domestic law and practice

1. The Constitution

Article 40(3) provides, in so far as relevant, as follows:

“(1) The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

(2) The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen. ...”

2. The European Convention on Human Rights Act 2003 (“the 2003 Act”)

The 2003 Act entered into force with effect from 1 January 2003. In *Dublin City Council v. Fennel* ([2005] 1 IR 604), the Supreme Court found that the 2003 Act could not be seen as having retroactive effect or as affecting past events.

3. *Inquests held under the Coroners Act 1962 (“the 1962 Act”)*

A Coroner has a statutory duty to hold an inquest in the circumstances referred to in section 17 of the 1962 Act:

“Subject to the provisions of this Act, where a coroner is informed that the body of a deceased person is lying within his district, it shall be the duty of the coroner to hold an inquest in relation to the death of that person if he is of opinion that the death may have occurred in a violent or unnatural manner, or suddenly and from unknown causes or in a place or in circumstances which, under provisions in that behalf contained in any other enactment, require that an inquest should be held.”

The purpose of the inquest is to establish the relevant facts surrounding the death, to place those facts on the public record and to make the findings for which section 30 of the 1962 Act provides. Consideration of civil or criminal liability is expressly prohibited:

“Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when and where the death occurred.”

As to “how” death occurred, a number of verdicts are open to a Coroner or a jury including accidental death, death by misadventure, an open verdict, death by natural causes and unlawful killing.

Where an inquest is held with a jury, it is the jury which returns the findings and verdict together with any rider or recommendation.

The next-of-kin will be informed of the date and place of the inquest. The Coroner will decide on the witnesses to be called and, if next-of-kin have information which may be helpful at the inquest, they are to communicate this to the Coroner (or to the police).

The Coroner determines who can ask questions at an inquest but usually a “properly interested person” may examine a witness or be legally represented. Properly interested persons include the next-of-kin, the personal representatives of the deceased and the representatives of an authority in whose care the deceased was at the time of death. Next-of-kin are not obliged to be, but can be, legally represented.

4. *Relevant inquest case-law (the United Kingdom and Ireland)*

The principal judgment in the United Kingdom concerning the role and function of an inquest as a fact-finding inquiry into a death pre-dating the Human Rights Act 1998 (“the HRA”) is that of *R. v. H.M. Coroner for North Humberside and Scunthorpe ex p. Jamieson* ([1995] Q.B. 1). Sir Thomas Bingham M.R. held that the words “How... the deceased came by his death” in section 11(5)(b) of the Coroners Act 1988 and Rule 36 were to be understood as meaning “by what means”:

“... the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but ‘how ... the deceased came by his death’, a more limited question directed to the means by which the deceased came by his death.”

In the later case of *Eastern Health Board v. Dublin City Coroner* ([2001] IESC 96), Keane C.J. (giving the majority judgment of the Irish Supreme Court) considered that the principles expressed by Sir Thomas Bingham in the *Jamieson* case were applicable to the construction of section 30 of the 1962 Act. In responding to a submission concerning the scope of the inquiry

permitted on the proper construction of section 30, Keane C.J. concluded that, if an inquest were to extend its inquiries beyond the circumstances, including the proximate medical cause of the death, in which the death occurred, it would become, an inquiry of a radically different nature and one not envisaged by the Government in enacting the 1962 Act. The holding of such an inquiry would not merely be unwarranted having regard to the restrictive terms of section 30 but it would be wholly at odds with the general policy underlying the 1962 Act.

On 11 March 2004 House of Lords decided *R. (Middleton) v West Somerset Coroner* ([2004] 2 A.C. 182) and *R. (Sacker) v. West Yorkshire Coroner* ([2004] 1 W.L.R. 796). It was found that an investigation required by Article 2 of the Convention was to ensure the accountability of State agents for deaths occurring under their responsibility and was to be capable of leading to a determination of, *inter alia*, whether the protection afforded to life was adequate and to the identification of those involved. The inquest, as the means by which the State ordinarily sought to discharge its investigative obligation, ought to culminate in an expression of the jury's conclusion on the central factual issues in the case. To achieve this, a change of interpretation was necessary to comply with the State's Convention investigative obligations and, notably, "how" in section 11(5)(b) of the Coroner's Act 1988 would be more broadly interpreted so as to connote "by what means and in what circumstances".

In *Magee v. Farrell and Others* ([2009] IESC 60), the Supreme Court examined whether the State was required to provide a plaintiff with legal aid or assistance to attend and participate in the inquest into her son's death in custody. In finding that a person entitled to be represented at an inquest had no constitutional right to legal aid, it noted that an inquest was an inquisitorial fact-finding exercise which could not consider or investigate issues of civil or criminal liability.

5. *The Coroners Bill 2007 ("the 2007 Bill")*

The explanatory memorandum to the 2007 Bill notes that the Coroners Review Group Report of December 2000 recommended a comprehensive overhaul of the Coroners service. This reform work was enhanced by the later Report of the Coroners Rules Committee of October 2003. New legislation was a central feature of the proposed reform and, following further public consultation, the 2007 Bill was published by the Deputy *Tánaiste* (Prime Minister) and by the Minister for Justice, Equality and Law Reform. The establishment of a Coroner Service Implementation Office was announced at the same time. The Bill has not yet been passed into law.

The Bill has two main objectives. As well as the establishment of a new full time Coroners service, the Bill is to "comprehensively reform" the existing coronial legislation by replacing the 1962 Act with modern updated provisions regard being had to the jurisprudence of the Irish courts and of this Court as well as to developments in jurisprudence and ongoing reform in other common law jurisdictions. The Explanatory Memorandum notes as follows as regards the scope of the inquest:

"[The 2007 Bill] provides a statutory framework widening the scope of the inquest from investigating the proximate medical cause of death, to establishing in what circumstances the deceased met his or her death. The current law in the Act of 1962

and as interpreted by the Courts, provides for a restrictive approach as to the examination at inquest of “how” the person died. The examination is limited to the proximate medical cause of death. The Coroners Review Group recommended the extension of the remit of the coroner to the investigation of the wider circumstances surrounding a death and that it be expressed in positive terms in any new legislation.”

Section 86 of the 2007 Bill provides that legal aid and advice may be provided to parties to certain proceedings before a Coroner subject to the provisions and limitations of the Civil Legal Aid Act 1995. In qualifying cases, legal aid and advice would be granted to one family member of the deceased (or to a friend in the absence of such family member) in respect of any one investigation by a Coroner or any one inquest.

COMPLAINTS

The applicant invokes Articles 2, 6, 8 and 13 of the Convention arguing that the 2003 Act should be retroactive and apply to her partner’s death.

She also complains under Article 2 about delay in holding the inquest. She further maintains that there was no effective investigation within the meaning of Article 2. She argues that scope of the inquest was insufficient. She also considers that the Coroner inadequately used the discretion available to him during the inquest and, in particular, she claims that he refused on 22 January 2009 to disclose relevant documents requested by her; to adjourn to ensure the attendance of a police officer who was in the same unit as Officer A or of Officer A’s Commanding Officer; to allow witnesses be examined which might have established the kind of car from which the fatal shot was fired; to make any enquiry as to what had happened to that car or whether it had been examined or preserved; to engage a stenographer; and to allow the applicant’s representative to address the jury on the evidence.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies as regards her complaints under the procedural aspect of Article 2 about the adequacy of the investigations conducted by the authorities into her partner’s death, within the meaning of Article 35 § 1 of the Convention?

2. Did the authorities’ investigation into the fatal shooting of Ronan MacLochlainn comply with the procedural investigative obligation under Article 2 of the Convention (*Kelly and Others, McKerr, Hugh Jordan and Shanaghan* judgments of 4 May 2001 together with *McShane v. the United Kingdom*, no. 43290/98, 28 May 2002; *McGlinchey and Others v. the United Kingdom*, no. 50390/99, ECHR 2003-V; *Finucane v. the United Kingdom*, no. 29178/95, ECHR 2003-VIII; and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 298-306, ECHR 2011 (extracts))?

The parties are requested to refer to the police and any other investigation into the circumstances of his death, the scope and speed of the inquest and to any other administrative/disciplinary inquiries which were initiated.

3. Did the applicant have at her disposal an effective domestic remedy as regards her complaint under Article 2 as required by Article 13 of the Convention (for example, *McKerr v. the United Kingdom*, at § 173; *Bubbins v. the United Kingdom*, no. 50196/99, §§ 170-173, ECHR 2005-II (extracts); and *Giuliani and Gaggio v. Italy* [GC], cited above, §§ 335-337)? In this respect, the applicant is requested to outline, submitting relevant decisions/judgments, the current status of her civil negligence action.