



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34698/04
by Sylvia HACKETT
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on
10 May 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 10 September 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, a United Kingdom and Irish citizen born in 1956 and living in Strabane, Tyrone, is represented before the Court by Ms P. Coyle of Harte Coyle Collins, solicitors practising in Belfast.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is the wife of Dermott Hackett who, on 23 May 1987, was ambushed in his bread van by loyalist paramilitaries and hit by some fifteen to sixteen bullets which killed him. At the time of his death members of the Catholic clergy and members of the SDLP criticised the RUC stating that Dermott Hackett had been subject to police harassment which may have operated to target him for loyalist paramilitaries.

Shortly afterwards, Michael Stone, when arrested following his attack on mourners in Milltown cemetery, admitted carrying out the murder of Dermott Hackett. Lee Francis Deary, aged 17 at the time, had also been arrested and charged with aiding and abetting the murder and with various counts of possession of firearms.

On 7 June 1988, Deary pleaded not guilty to the murder of Dermott Hackett. At the conclusion of the trial, he was found guilty by the judge on 1 July 1988 and detained at the pleasure of the Secretary of State.

On 5 December 1988, Stone pleaded not guilty to the murder of Dermott Hackett. On 3 March 1989, he was found guilty by the judge and sentenced to life imprisonment.

In July 2003, Stone published a book in which he claimed, *inter alia*, that neither he nor Deary were involved in the murder of Dermott Hackett. He stated that he had been involved in a conspiracy to kill Dermott Hackett, who was suspected of running guns for the IRA in his bread van, and had been shown intelligence files by members of the security forces. However he took the view that the security of the operation had been compromised after being told that the security forces knew about the plan and would let his team in and out safely and therefore pulled out of the plan. Hackett was killed a week later. Stone maintained that he admitted the murder because he was aware that Deary, who had been arrested and charged, had not been involved and he believed that his admissions would either result in the charges being dropped or the acquittal of Deary, while he faced life imprisonment in any event. He stated that Deary, who had merely been in possession of a stolen radio given to him by the two men who had stolen the car used in the attack on McDermott, had happened to know about an old IRA weapons hide. Stone also claimed that he had made false admissions to

another murder, that of Kevin McPolin, in order to shield the group that had been involved.

Following the publication of the book, the applicant's solicitors wrote to the Secretary of State for Northern Ireland, the Chief Constable of the Police Service of Northern Ireland ("PSNI") and the Director of Public Prosecutions and asked what steps were being taken by these public authorities in light of Stone's allegations. The applicant states that her representatives requested copies of the transcript of the trial and the bills of indictment from the Lord Chief Justice who has yet to determine the application.

On 11 August 2003 the Chief Constable directed a Detective Inspector of the PSNI, with no connection with the original investigation, to examine the book and any other relevant material that existed in relation to the death of Dermot Hackett. As appeared in an affidavit sworn on 12 February 2004, steps were also taken to have a senior detective from outside Northern Ireland examine the collected material and carry out such further enquiries and examine such further materials as he felt appropriate. The officer was to report to the Chief Constable on the findings and make recommendations as to any issues requiring re-examination. The family were to be briefed on any findings or recommendations.

Meanwhile, on 5 November 2003, the solicitors lodged proceedings against the Secretary of State complaining of a failure to hold an Article 2 compliant investigation into the death of Dermott Hackett. Following the decision of the House of Lords in *McKerr v. Secretary of State for Northern Ireland* on 11 March 2004 holding that a complaint could not be brought alleging a procedural violation of Article 2 where the death occurred before 2 October 2000, counsel advised the applicant that there was no possibility to continue the judicial review application, which was accordingly withdrawn on 6 September 2004.

On 24 May 2004, the applicant's solicitors wrote to the Serious Crime Review Team (SCRT), with whom they had been directed to correspond about this matter, and sought disclosure, *inter alia*, of copies of the interviews conducted with Stone and Deary in which they admitted involvement in the murder, copies of the forensic evidence and scene of crime photographs and any additional information available concerning the murder and the role of the security forces in the murder.

On 7 June 2004, the SCRT informed the solicitors that the PSNI had arranged for a senior detective from outside Northern Ireland to examine and review the allegations made by Michael Stone, that he would advise the Chief Constable what if any further action should be taken and that the family would be informed of the outcome of this review. As a result, the PSNI could not accede to the current request for disclosure of documentation. This officer was later identified as Mr Peter Kirkham, previously of the Metropolitan Police. By letter dated 20 July 2004, the

applicant was informed that Mr Kirkham would be available for a meeting in August 2004. A meeting took place. A communication from Mr Kirkham to the solicitors indicated that he was aware of their concerns about access to material and stressed that at this stage all he had been asked to do was to provide an independent and impartial assessment of Michael Stone's allegations that he had colluded with the RUC/military prior to the Milltown murders and of his allegations that he did not take part in the murders of Dermot Hackett and Kevin McPolin.

The applicant's solicitors repeated their request for disclosure of materials, disputing that it would hinder the ongoing investigation. They also requested a copy of the report prepared by an inspector of the PSNI. No response had been received to these requests.

COMPLAINTS

The applicant complains under Article 2 of the Convention that the United Kingdom has failed to provide an effective official investigation into the circumstances of her husband's death, in particular the allegations made by Michael Stone of security force involvement. She argues that the PSNI investigation lacks the requisite degree of independence from those implicated in the events (the former RUC and the security forces), that Mr Kirkham's review is not sufficiently independent from those responsible, that the investigation into the credibility of Stone's allegations is not effective as it has limited remit and is not capable of identifying and punishing those responsible; that there has been unwarranted and unjustifiable delay in progressing the investigation; and that the PSNI investigation was not open to public scrutiny nor gave the next of kin the requisite degree of access to the proceedings to enable them to protect their interests, in particular as she has been refused access to documents relating to the prosecution and trial of Stone and Deary, as well as the recent PSNI report, by police officers with a clear conflict of interest.

The applicant also complains under Article 13 of the Convention of the lack of any effective remedy, submitting that the House of Lords' decision in *McKerr* removed any domestic remedy for her allegations that the current investigation breached Article 2 of the Convention.

THE LAW

1. The applicant complains that there has been no effective investigation into the circumstances of her husband's death as regards the recent disclosures made by Michael Stone.

Article 2 of the Convention provides as relevant:

“1. Everyone's right to life shall be protected by law ...”

The Court recalls that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others*, cited above, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances or otherwise unlawful, and afford a sufficient element of public scrutiny of the investigation or its results (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-109, 4 May 2001; *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

The Court would emphasise that in the normal course of events, a criminal trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the strongest safeguards of an effective procedure for the finding of facts and the attribution of criminal responsibility (see *McKerr v. the United Kingdom*, no. 28883/95, § 134, ECHR 2001-III). In the present case, two men were prosecuted and convicted after such a public trial. However, later events or circumstances may arise which cast doubt on the effectiveness of the original investigation and trial or which raise new or wider issues and an obligation may arise for further investigations to be pursued (see, *mutatis mutandis*, *McKerr*, cited above, § 137). The nature and extent of any subsequent investigation required by the procedural obligation will inevitably depend on the circumstances of each particular case and may well differ from that to be expected immediately after a suspicious or violent death has occurred.

Turning to this application, the Court recalls that Michael Stone, convicted of the murder of the applicant's husband, published a book claiming, *inter alia*, that although he was innocent of that crime he had deliberately confessed to protect Dreary and alleging security force collusion in this and other incidents. The Court is prepared to accept that when this was drawn to the attention of the authorities there was an obligation to give the case further consideration. It did not by itself require

them to launch a fresh murder investigation. There will have been obvious issues of credibility attaching to the statements, made many years after the events, of a person already convicted of serious crimes, who on his own admission has been prepared to lie to mislead the authorities for his own purposes.

It appears that the PSNI have instituted steps to investigate the credibility of Michael Stone, appointing an officer internally and an officer from outside the region to give an independent report.

The applicant is critical of the investigation, however, alleging that it lacks the requisite independence from those implicated in events, that it is limited in remit and not as such intended to identify or punish those responsible for the murder and that there has been undue delay and inadequate involvement of the family in the process.

The Court finds no reason to doubt the independence of the officer appointed from outside the PSNI. It has not been substantiated that the method of appointment or the fact that he reports to the PSNI deprives him of the necessary ability to report objectively and without being influenced by any officers implicated in the events. As regards the limited nature of the investigation, this has the status of a preliminary enquiry into the credibility of Stone's assertions and depending on its conclusions may, in due course, lead to further steps being taken. Meanwhile the PSNI and the independent officer have been in contact with the applicant and she has had the opportunity to make representations. Given the preliminary nature of the investigation, which may or may not lead to suspicions arising against other persons and the possibility of criminal charges, the Court is not persuaded that the interests of the family requires any closer involvement in the process at this stage. Nor does it find any problem of lack of public scrutiny emerging from this procedure. Insofar as the applicant complains that she has not been given, at her request, copies of the earlier prosecution and trial documents, it is not apparent that any final decision has been taken. Where there is an ongoing review of available material, the procedural requirement cannot be interpreted as requiring that the family, or indeed the public, enjoy simultaneous access to such material. In due course, they should be informed, in at least some degree, of findings and recommendations.

Finally, concerning the allegations of delay, the Court notes that the independent officer was appointed in or about early 2004. He is also inquiring into other allegations of collusion made by Michael Stone. Given the lapse of time and difficulties in revisiting events which occurred more than sixteen years ago, the Court does not consider that there is any indication at present that the investigation has failed to comply with any requirement of due expedition.

In conclusion, the Court considers that it is premature to impugn the response of the authorities to the allegations of Michael Stone. It is not possible at this stage to anticipate the outcome of the proceedings or to

assume that the applicant will not be duly informed of any conclusions reached or that the decisions taken will not conform with the authorities' obligations.

It follows that these complaints disclose no appearance of a violation of Article 2 of the Convention and must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that she has no effective remedy for her complaints, invoking Article 13 of the Convention:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

In view of its findings above concerning the procedural aspect of Article 2, the Court finds that in the circumstances no separate issue arises under Article 13 (see *McKerr*, cited above, § 175; *Makaratzis v. Greece* [GC], no. 50385/99, § 86, ECHR 2004-...).

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President