



Case concerning 1948 Batang Kali killings by British soldiers is inadmissible

In its decision in the case of **Chong and Others v. the United Kingdom** (application no. 29753/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the killing of 24 men in December 1948 by British soldiers in the village of Batang Kali in Selangor, which is now a state of Malaysia but at the time was part of the British Empire.

The official account was that the 24 men, believed to be sympathisers in a communist insurgency, had been killed when trying to escape, while surviving villagers and the applicants in this case, who are relatives of the deceased, alleged that they had been murdered in cold blood.

The applicants complained before the European Court that there had never been a full and independent public inquiry into the killings.

The Court found that the applicants' complaint was not within its jurisdiction (*ratione temporis*) because the deaths had occurred more than ten years before the United Kingdom had given individual applicants the right to apply directly to the Court. In any case, new evidence had come to light as early as 1970, when the soldiers had admitted that they had been ordered to carry out the massacre, so the applicants had lodged their application long after the Convention time-limit.

Principal facts

The applicants, Nyok Keyu Chong, Ah Yin Lim, Kok Lim, Ah Choi Loh Kon Fook Loh, and Kum Thai Wooi, are relatives of the 24 men who were killed. They are Malaysian nationals who were born in 1961, 1937, 1939, 1941, and 1942 respectively. They live in Selangor, Johor Bahru, Kuala Lumpur, and Pahang (all in Malaysia).

The killings occurred shortly after the end of the Second World War during a communist insurgency which became known as the "Malayan Emergency".

The official account of the killings was that a patrol of the Scots Guards, sent to the village to ambush insurgents, had detained men they believed to be "bandits" and opened fire on them when they had tried to escape. The surviving villagers alleged on the other hand that the villagers, who were unarmed, had been rounded up, and the men had been separated from the women and children and murdered in cold blood.

The British authorities took some investigatory steps in 1948 and 1970 and the Royal Malaysian Police in 1993, but no full public inquiry has ever been carried out.

The 1970 investigation was prompted by a number of guardsmen making sworn statements to the media that the villagers had not tried to escape and that they had been ordered to massacre them. The guardsmen confirmed their statements when interviewed by the prosecuting authorities. The Attorney General decided however that the investigation should go no further because it was unlikely that sufficient evidence would be obtained to support a prosecution.

Similarly, the Royal Malaysian Police file was closed in 1997, apparently because there was insufficient evidence.

Following the refusal of two Ministers to hold an inquiry, the applicants brought judicial review proceedings in 2011. The domestic courts, ultimately the Supreme Court in 2015, rejected the

applicants' complaints as inadmissible, either because they were outside the scope of the European Convention (*ratione materiae*) or were out of time (*ratione temporis*).

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 24 May 2016.

Relying on Article 2 (right to life), the applicants complained that there had been a failure to conduct an independent investigation into the deaths at Batang Kali in 1948.

The decision was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,
 Aleš **Pejchal** (the Czech Republic),
 Krzysztof **Wojtyczek** (Poland),
 Ksenija **Turković** (Croatia),
 Pauliine **Koskelo** (Finland),
 Tim **Eicke** (the United Kingdom),
 Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

It was not in dispute that, were the events at Batang Kali to be repeated today, the United Kingdom would be under an obligation to conduct an Article 2 compliant investigation. Furthermore, although some investigatory steps had been taken by the British and Malaysian authorities, there was no suggestion that they could have satisfied the requirements under that provision.

The Court reiterated its previous case-law¹ that a State was obliged to carry out an effective investigation into deaths pre-dating the entry into force of the Convention on its territory if there was a "genuine connection" between the event concerned and the entry into force of the Convention. That connection could only be established, firstly, if the period of time between the event and the entry into force of the Convention had not exceeded ten years, and secondly, if the major part of the investigation had taken place (or should have taken place) after the entry into force of the Convention. The Court accepted that, even if the "genuine connection" test was not satisfied, there might be extraordinary situations where the Court's jurisdiction could be established by the need to protect the underlying values of the Convention ("the Convention values test").

Much of the Court's previous case-law concerned countries which had granted the right of individual application at the same time as the Convention entered into force in their territory. This was not the case in the United Kingdom, where the Convention had entered into force in 1953 and right of individual application was granted in 1966. As a consequence, before applying the "genuine connection" test the Court had to establish which of these two dates was the relevant date for determining the limits of its temporal jurisdiction. It considered that the case-law pointed overwhelmingly towards the relevant date being the date that the right of application petition had been recognised.

Because there had been an 18-year period between the deaths (in 1948) and the right of individual petition in the UK (1966), thus exceeding the ten-year limit set out in the Court's case-law, there could therefore be no "genuine connection" between the two. Nor could the "Convention values" test be applied to events which had occurred prior to the adoption of the Convention in 1950, for it was only then that the Convention began its existence as an international human rights treaty.

¹ [Janowiec and Others v. Russia](#) (application nos. 55508/07 and 29520/09), Grand Chamber judgment of 2013.

In sum, the Court found that it had no competence to examine the applicants' complaint because it did not come within its temporal jurisdiction (*ratione temporis*).

In any case, the applicants' case had been lodged long after the six-month time limit for lodging an application. The applicants had to have been aware of any lack of an effective criminal investigation as early as the 1970s when significant new evidence had come to light. While further evidence had emerged after that, it had merely corroborated the account that the applicants had always believed, and which had already been given considerable support by the soldiers in their sworn statements in 1969-70. It could not therefore be said that the application had been lodged "with due expedition".

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.